SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 130.

WILLIAM C. FITTS, AS ATTORNEY GENERAL OF THE STATE OF ALABAMA; A. B. CARMICHAEL, AS SOLICITOR OF THE ELEVENTH JUDICIAL CIRCUIT OF THE STATE OF ALABAMA, AND WILLIAM H. GRILLEY, APPELLANTS,

vs.

CHARLES M. MCGHEE AND HENRY FINK, AS RECEIVERS OF THE MEMPHIS AND CHARLESTON RAILROAD; AND THE MEMPHIS AND CHARLESTON RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

FILED JULY 2, 1887.

(16,622.)

(16,622.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 409.

WILLIAM C. FITTS, AS ATTORNEY GENERAL OF THE STATE OF ALABAMA; A. H. CARMICHAEL, AS SOLICITOR OF THE ELEVENTH JUDICIAL CIRCUIT OF THE STATE OF ALABAMA, AND WILLIAM H. GILLIAM, APPELLANTS,

vs.

CHARLES M. McGHEE AND HENRY FINK, AS RECEIVERS OF THE MEMPHIS AND CHARLESTON RAILROAD, AND THE MEMPHIS AND CHARLESTON RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

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1 THE UNITED STATES OF AMERICA,
Northern District of Alabama, Northern Division.

Pleas had at an adjourned term of the circuit court of the United States for the northern division of the northern district of Alabama, begun and held at the United States court-rooms, in the city of Huntsville, in the said northern division of the northern district of Alabama, on the twenty-eighth day of December, in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of the United States of America the one hundred and twenty-first year, having been regularly adjourned from the 28th day of October, 1896.

Present and presiding: The Hon. Aleck Boarman, judge of the district courts of the United States for the western district of Louisiana, presiding by virtue of an order of designation and assignment made Nov. 17th, 1896, by Hon. Don A. Pardee, circuit judge fifth judicial circuit; J. C. Musgrove, U. S. marshal, and N. W. Trimble, clerk.

Among other proceedings were had the following:

Be it remembered that heretofore, on, to wit, the fourteenth day of February, 1895, came C. M. McGhee and Henry Fink, as receivers of the Memphis and Charleston railroad, by their solicitors, and filed in the office of the clerk of said court their petition, said petition being in words and figures as follows, to wit:

Petition for Permission to Commence Suit.

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

SAMUEL THOMAS, Complainant, *vs.* MEMPHIS & CHARLESTON RAILROAD COMPANY, Defendant, and CENTRAL TRUST COMPANY OF NEW YORK, Complainant, *vs.* MEMPHIS & CHARLESTON RAILROAD COMPANY, Defendant.	No. 177. Equity.

2 To the honorable judges of said court:

Charles M. McGhee and Henry Fink, as receivers of the Memphis and Charleston Railway Company in the above-entitled causes, respectfully represent that by an act of the General Assembly of the State of Alabama approved February 11th, 1895, the tolls on the Florence bridge were fixed below the maximum rate which the Memphis & Charleston Railroad Company has the right to charge under its chartered rights and privileges, and said tolls so fixed are below

a reasonable rate and amount to a confiscation of the property of said railroad company; all of which will be shown by the bill accompanying this petition and which these petitioners propose to file in connection with the Memphis & Charleston Railroad Company in a case in this court against the State of Alabama, William C. Oates, as governor of the State of Alabama, and William C. Fitts, as attorney general of the State of Alabama, as defendants, to test the constitutionality and validity of said act.

The premises considered, petitioners pray an order of this court authorizing them to institute and prosecute said suit in equity to a final conclusion; and will ever pray, etc.

HUMES, SHEFFEY & SPEAKE,
Solicitors for the Receivers.

Endorsed: Filed in clerk's office Feb'y 14th, 1895. N. W. Trimble, clerk U. S. cir. court.

Order Granting Permission to Commence Suit.

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

SAMUEL THOMAS, Complainant, *vs.* MEMPHIS & CHARLESTON RAILROAD COMPANY, Defendant, and CENTRAL TRUST COMPANY OF NEW YORK, Complainant, *vs.* MEMPHIS & CHARLESTON RAILROAD COMPANY, Defendant.	No. 177. Equity.

3 In the above-entitled causes, upon the application of the receivers filed therein for leave to institute and prosecute a suit in equity in this court in their name and the name of the Memphis & Charleston Railroad Company against the State of Alabama, its governor and attorney general, as defendants, to test the constitutionality and validity of an act of the legislature of the State of Alabama, passed February 11th, 1895, for the purpose of fixing the rate of tolls of the Florence bridge, the property of the said Memphis & Charleston Railroad Company, it is ordered that said receivers be, and they are hereby, authorized, empowered, and directed to file said bill and to institute said suit and to prosecute the same to a final conclusion and determination, both in this court and the Supreme Court of the United States if necessary and in the judgment of their counsel advisable.

Done this 14th day of February, 1895.

JOHN BRUCE, *Judge.*

Endorsed: Filed in clerk's office February 14th, 1895. N. W. Trimble, clerk U. S. cir. court.

Bill of Complaint.

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

CHARLES M. McGHEE and HENRY FINK, as Receivers of the Memphis & Charleston Railroad Company, and the said Memphis & Charleston Railroad Company, Complainants,
vs.
THE STATE OF ALABAMA, WM. C. OATES, as Governor of the State of Alabama, and Wm. C. Fitts, as Attorney General of the State of Alabama, Defendants.
} No. 213. Equity.

To the honorable judges of said court:

Charles M. McGhee and Henry Fink, as receivers of the Memphis and Charleston Railroad Company, and said Memphis and Charleston Railroad Company, as complainants, bring this their bill of complaint against The State of Alabama, Wm. C. Oates, as gov-
4 ernor of the State of Alabama, and Wm. C. Fitts, as attorney general of the State of Alabama; and thereupon your orators complain and say:

1st. That the complainants McGhee and Fink, as receivers as aforesaid, were duly appointed and constituted such receivers by an order of this court made in an equity cause now pending therein, in which Samuel Thomas is complainant and The Memphis & Charleston Railroad Company is defendant, on the 29th day of July, 1892, and they were as such receivers duly authorized and empowered by the order appointing them and by special order made in said cause on, to wit, the 14th day of February, 1895, to institute this suit for and on behalf of said Memphis & Charleston Railroad Company. The said Memphis & Charleston Railroad Company is a corporation duly incorporated under the laws of the States of Alabama and Tennessee, as will be hereinafter more particularly shown, and is now in the exercise of all the franchises and privileges conferred by its said charters, subject to the control and management of the said receivership, as shown by said order of this court creating the same.

2nd. The said Wm. C. Oates is now governor of the State of Alabama, and said Wm. C. Fitts is now attorney general of the State of Alabama, and this suit is brought against said State, governor, and attorney general as such to test the constitutionality and validity of an act of the General Assembly of Alabama approved February 9th, 1895, and entitled "An act to fix the maximum of tolls to be charged by the owners, lessees, or operators of the road bridge crossing the Tennessee river between the counties of Colbert and Lauderdale and known as the Florence bridge, and to fix the penalty for demanding or receiving a higher rate of toll."

3rd. The complainant The Memphis & Charleston Railroad

Company is the owner of said bridge, as will be more particularly hereinafter shown, and the said act is in the words and figures following, to wit:

"An act to fix the maximum of tolls to be charged by the
5 owners, lessees, or operators of the road bridge crossing the Tennessee river between the counties of Colbert and Lauderdale, and known as the Florence bridge, and to fix the penalty for demanding or receiving a higher rate of toll.

SECTION 1. Be it enacted by the General Assembly of Alabama, That the maximum rates of toll to be charged by the owners, lessees, or operators of the bridge crossing the Tennessee river, between the counties of Colbert and Lauderdale, and known as the Florence bridge, shall be as follows:—For each foot passenger $.05, for children under 14 years of age and all pupils attending school $.02, for each one-horse vehicle and driver $.15, for each two-horse vehicle and driver $.25, for each three-horse vehicle and driver $.30, for each four-horse vehicle and driver $.35, for each additional horse to vehicle $.05, for each additional person in vehicle $.05, for each horse, mule, or animal of like kind with rider $.08, for each horse, mule, or animal of like kind $.05, for each cow, steer, or animal of like kind $.05, for each sheep, hog, goat, or animal of like kind $.03.

SECTION 2. Be it further enacted, That should the owners, lessees, or operators of said toll-bridge, by themselves, or any of their agents demand or receive from any person a higher rate of toll than is prescribed by this act, he or they forfeit to such person twenty dollars for each offense, to be recoverable before any justice of the peace, or notary public and *ex officio* justice of the peace of either of the said counties of Colbert or Lauderdale."

"Approved February 9th, 1895."

4th. The said Memphis & Charleston Railroad Company acquired its right to construct and own said bridge and to all the franchises and privileges which it claims in connection therewith in the following manner: The company known as the Florence Bridge Company was incorporated by special act of the General Assembly
6 approved January 12th, 1832, said act of incorporation being found in the printed Acts of the General Assembly of Alabama, 1832, pages 59–61, and a copy of said act is herewith filed, marked Exhibit "A A A," and prayed to be taken and considered as a part of this bill. By section 7 of said act it is expressly provided " that the rates of toll for crossing said bridge shall never exceed the present rates of ferriage at said ferry." The complainants allege that this clause of the charter of said Florence Bridge Company means that the rates of toll for crossing said bridge shall not be higher than the rates of toll charged at the date of incorporation by the owners of the ferry across the Tennessee river at Florence.

5th. In pursuance of the provisions and terms of said charter and in accordance therewith, the said Florence Bridge Company was duly organized, and constructed a bridge across the Tennessee river

at Florence, in accordance with the terms, provisions, conditions, and stipulations of said charter, and operated the bridge so constructed, and exercised all the franchises and privileges conferred thereby, with full possession, use, and enjoyment thereof until the sale of its said bridge franchise, rights, and privileges to the said Memphis & Charleston Railroad Company, as hereinafter stated.

6th. Said Memphis & Charleston Railroad Company was first incorporated by an act of the General Assembly of the State of Tennessee passed February 2nd, 1846. Said act of incorporation is in the printed Acts of the said General Assembly of the State of Tennessee, 1845–'46, pages 266–276, and a copy thereof is herewith attached, marked Exhibit "B B B," and prayed to be considered a part of this bill. By section 3 of this act it is expressly provided that the company created thereby may purchase and have and hold any bridge over which it may be necessary to carry said railroad, and, when said purchase is made, to hold said bridge on the same
7 terms and with the same rights which belonged to the individuals or corporations from which such purchase is made. Said Memphis & Charleston Railroad Company was subsequently incorporated by said act of the General Assembly of Alabama approved January 7, 1850. This Alabama act of incorporation, by the preamble thereto, recites "That whereas an act was passed by the State of Tennessee, bearing date the 2nd day of February, 1846, and the same was amended by an act of the same State, dated February 4, 1848, for the formation of a company under the name and style of the Memphis & Charleston Railroad Company, for the purpose of establishing a communication by railroad between Memphis, Tennessee, and Charleston, South Carolina; and whereas it is believed the most eligible route is through a portion of this State, and whereas it is also believed that great and lasting benefits will accrue to the inhabitants of this State from the said improvement; that therefore the said company shall have and enjoy all the rights, powers, and privileges granted to it by the acts of incorporation above mentioned and shall be subject to all the liabilities and restrictions imposed by the same." A copy of said Alabama charter of the Memphis & Charleston Railroad Company is herewith exhibited, marked Exhibit "C C C," and prayed to be considered as a part of this bill. In case of Johnson *vs* State, in 88th Ala., the supreme court of Alabama expressly decided that the provisions of the Tennessee charter which conferred the valuable rights on said company *was* conferred also on the Alabama corporation by the provisions of the section of the charter above recited, which declares that the said company shall have and enjoy all the rights, powers, and privileges granted to them by the acts of incorporation above mentioned, to wit, the Tennessee charter.

7th. Under the power thus conferred by its Alabama charter, said Memphis & Charleston Railroad Company, after its incorporation, as aforesaid, under and by virtue of said act of the General
8 Assembly of Alabama, purchased from the said Florence Bridge Company its said bridge across the Tennessee river, and the said Memphis and Charleston Railroad Company has ever

since said purchase, which was made some time in the year 1850, operated the bridge under the charter of said Florence Bridge Company, having a toll-bridge for that purpose, and also a bridge above the toll-bridge for the use of its railroad business.

8th. Complainants say unto your honors and allege the fact to be that the present tolls charged for crossing said bridge do not exceed and in some respects are really lower than the ferry charges which were made for crossing the ferry on the Tennessee river, at Florence, at the time of the incorporation of the Florence Bridge Company. The said charges are as follows:

Rates of Toll Over Florence Bridge.

Horses, mules, or cattle, in droves, each	$ 10
One person	10
One man and horse	20
One-horse buggy, cart, or dray	30
Two-horse carriage or buggy	50
Two-horse carriage; capacity, 6 passengers	70
Two-horse or ox wagon	60
Four " " " "	75
Six " " " "	1 00
Special school tickets	04

9th. Complainants further show and allege that the rate of tolls for crossing said bridge which are fixed by said act of the General Assembly of Alabama approved February 9th, 1895, is much below the rate of charges for crossing the said ferry which were made at the time of the incorporation of the said Florence Bridge Company, and complainants allege that said change and reduction of tolls was made without their consent and against their protest, and
9 these complainants contend that the legislature of Alabama had no authority to so reduce the tolls charged by these complainants for crossing the said bridge. These complainants claim that the act incorporating the Florence Bridge Company is a contract between the State and the owners of the bridge, and the Memphis and Charleston Railroad Company became the owner of whatever rights the Florence Bridge Company acquired under their contract or charter, as above shown, and that the tolls so fixed by the said act of the Alabama legislature of date February 11th, 1895, *is* in violation of the constitutional rights of the Memphis & Charleston Railroad Company and of the said receivers as its representatives, as the owner or owners of the said chartered rights and privileges of said Florence Bridge Company, and that the said act is therefore unconstitutional, inoperative, null, and void.

10th. The Florence bridge is an iron structure on stone piers and abutments spanning the Tennessee river at or near Florence, Ala. It is about one-half mile long and has a draw-span 420 feet long, operated by a steam-engine. The estimated value of this bridge, at a reasonable figure, is $250,000.

The upper part of the bridge is a railroad bridge and the lower

part is a toll-bridge. The gross earnings from tolls collected on the toll-bridge for the 12 months ending December 31st, 1894, *was* $3,281.92. The expenses of the toll-bridge alone, for salaries of toll-keepers, waterman, and one-half the salary of the engineer (the other half being charged to the railroad portion of the bridge), *was* $1,237.50; oil, waste, and fuel for the 12 months, $25.00; making $1,262.50. The footway of the bridge has to be replaced once in every four years, requiring 100,000 feet, B. M., heart lumber at $12.00 per thousand; estimated cost of labor replacing and fitting same, $400.00; cost of painting and material, once in four years, $2,200.00; making an average cost per year of $555.00. This, together with the expense of toll-collectors and watchmen, makes $1,817.50 per year. This is actual expense, and does not provide for any
10 contingencies. Thus, the total earnings are $3,281.92 and the actual expenses $1,817.50 per year, outside of contingencies (including such as may be caused by accident to persons, vehicles, or animals crossing said bridge and the expense incurred in litigation in reference thereto), leaving $1,464.42 to pay interest, taxes, insurance, and incidentals. Complainants have now two lawsuits in the courts of Alabama—one for a horse being frightened and running away on the bridge and another for a party being injured thereon.

Assuming that the value of the toll-bridge is one-half of the total cost of the bridge (and it certainly ought to be that much, because the toll-bridge was built first and the superstructure was only strengthened to carry the railroad bridge), the net receipts from the tolls would be less than one per cent. interest on the investment, making no allowance for said contingent liabilities.

Said act fixing the tolls on this bridge places them at exactly one-half the present toll rates. Owing to the limited population on both sides of the river it cannot be hoped that the increased use of the bridge on account of reduced tolls will be appreciable, so that the earnings of the bridge are cut practically half in two, and instead of $3,281.92 they would be reduced to $1,640.96. Even assuming that the increase would be 20 %, the reduction would be such that the gross earnings would just about equalize the expenses, and the M. & C. railroad would be furnishing a free bridge to the two counties. The toll as placed by said act for foot passengers is five cents. This is the same as the rate over the St. Louis bridge, and the average daily number of passengers over the St. Louis bridge is 15,000 and the average number over the Florence bridge per day is only 17, and it is in about the same proportion with vehicles, only the toll- of the Florence br*dige* are not largely in excess of what is charged for vehicles over the St. Louis bridge. If there were two
11 populous districts on each *said* of the Florence bridge the tolls might be reduced, but as the bridge is used so little, on account of there not being people to use it, it should not be expected or required that complainants should furnish a bridge without reasonable compensation. With the tolls fixed as they are by the said act it simply amounts to a confiscation of the property.

11th. The complainants alleged that the said rate of tolls fixed

by the legislature of the State of Alabama is not reasonable; that it amounts virtually to a confiscation of the property rights of these complainants in said toll-bridge, and that said act is in conflict with the Constitution of the United States, because it deprives complainants of their property without due process of law and deprives them of the equal protection of the laws, and that said act should therefore by this court be declared invalid, inoperative, null, and void.

12th. Complainants further show that the rates of toll fixed by the said act of the General Assembly of the State of Alabama are arbitrary, unreasonable, and were fixed without these complainants being afforded any opportunity of showing what the receipts from said bridge and the corresponding expenditures in its cost and the keeping of it up are; and the fact is, taking into consideration the receipts from said toll-bridge for the past several years and the actual expenses of keeping it up and in operation, that if the complainants were obliged to operate the bridge, charging the tolls that are provided by the said act of the General Assembly of Alabama, the expenditures in keeping up the bridge would be largely in excess of the receipts from the tolls, and that the practical effect and operation of the enforcement of said act would be the confiscation of the property and the rights of property of said Memphis & Charleston Railroad Company in and to said bridge and its use. Complainants herewith exhibit a tabulated statement for the past three years showing the actual receipts and expenditures in operating and keeping up the said toll-bridge, and they mark the same Exhibit "D D D" and pray that it may be considered
12 a part of this bill of complaint.

13th. Complainants further show that section 2 of such act provides that should the owners, lessees, or operators of said toll-bridge, by themselves or any of their agents, demand or receive from any person a higher rate of toll than is prescribed in said act — forfeits to such person twenty dollars for each offence, to be recoverable before any justice of the peace or *ex officio* justice of the peace of either of said counties of Colbert or Lauderdale; and the complainants, further complaining, say that this clause of said act was inserted therein and could have no effect than a purpose to deter the complainants from questioning by legal proceedings the constitutionality of said act and the legal authority of the legislature in its enactment.

14th. And the complainants further show unto your honors that they are remediless except by a bill in equity to have the said act of the General Assembly of Alabama pronounced unconstitutional, inoperative, null, and void, and to establish and to have fixed and determined the rights of the owners of the said bridge under said charter of the Florence Bridge Company.

The premises considered, the complainants pray that the State of Alabama, said W. C. Oates, as governor of the State of Alabama, and the said Wm. C. Fitts, as the attorney general of the State of Alabama, be made parties defendant to this bill of complaint, and to that end that process of subpœna be issued to and served upon

the State of Alabama, the said Wm. C. Oates, as governor of the State of Alabama, and Wm. C. Fitts, as the attorney general of the State of Alabama, requiring them, in behalf of the said State, to answer, but not under oath, the allegations and averments of the foregoing bill of complaint, from paragraph one to paragraph fourteen, inclusive; and complainants pray that said act of the legislature of the State of Alabama approved February 9th, 1895, be declared contrary and repugnant to the Constitution of the United States, and there-
13 fore invalid, inoperative, null, and void, and that an injunction be granted prohibiting and restraining the said Wm. C. Oates, as governor of the State of Alabama, and the said Wm. C. Fitts, as the attorney general of the State of Alabama, and all persons whomsoever from instituting any proceeding against the complainants or either of them under the forfeiture clause above set out in the second section of said act of the General Assembly of Alabama.

And complainants pray for such other and further relief as may be authorized by the facts in the case.

HUMES, SHEFFEY & SPEAKE,
Solicitors for Complainants.

NOTE.—Complainants further pray that each of the defendants be required to answer each of the allegations of the foregoing bill of complaint from paragraph 1 to paragraph 14, inclusive, without oath, and that upon the final hearing of this case the court will pronounce the said act of the General Assembly of the State of Alabama of February 11th, 1895, as unconstitutional, inoperative, null, and void.

HUMES, SHEFFEY & SPEAKE,
Solicitors for Complainants.

Before me, Ed. E. Greenleaf, deputy clerk of the circuit court of the United States for the northern division of the northern district of Alabama, personally appeared N. K. White, who, being duly sworn, deposes and says that he is law and stock agent for the complainants in the foregoing bill of complaint, and as such is authorized to make this affidavit; that he has read the foregoing bill and, knows the contents thereof, and that the same are true to the best of his knowledge and belief.

N. K. WHITE.

Sworn to and subscribed before me this 14th day of February 1895.

ED. E. GREENLEAF,
Dep. Clerk U. S. Court.

Endorsed: Filed in clerk's office Feb'y 14th, 1895. N. W. Trimble, clerk.

14 EXHIBIT "A A A."

An act to incorporate the Florence Bridge Company.

SEC. 1. Be it enacted by the senate and house of representatives of the State of Alabama in General Assembly convened, That the persons who may become stockholders in the Florence Bridge Company, according to the provisions of this act, be and they are hereby created a body politic and corporate, by the name and style of the president, directors and company of the Florence Bridge Company, with power to hold real and personal estate, to sue and be sued, plead and be impleaded in any court of law and equity; to have and employ a common seal and to alter the same at pleasure; to make, amend and repeal all necessary and proper by-laws for the government of said corporation not inconsistent with the laws and constitution of this State.

SEC. 2. And be it further enacted, That the stock of said corporation shall be divided into shares of one hundred dollars each, and when there shall be subscribed the sum of sixty thousand dollars, the owners of the ferry across the Tennessee river at said town of Florence, shall be permitted to subscribe their respective shares or interests in said ferry or ferry landings, at the rate of thirty-five thousand dollars for the whole; and the interest so subscribed shall become a part of the capital and joint stock of said corporation; and when the whole interest in said ferry and landings shall be subscribed or condemned, according to the provisions of this act, the said corporation shall be vested with the whole title thereof, both in law and equity, to be held by them and their heirs and successors forever, upon the completion of the bridge according to this act.

SEC. 3. And be it further enacted, That John J. Winston, Abram D. Hunt and John McKinley, be and they are hereby appointed commissioners to receive subscriptions for the purpose of erecting a bridge across the Tennessee river at said town of Florence,
15 whose duty it shall be to open books for the subscription of stock, at the Eagle hotel in said town of Florence, on the 3rd Monday in April, 1832, and to keep said books open until the sum of sixty thousand dollars shall be subscribed.

SEC. 4. And be it further enacted, That when the sum of sixty thousand dollars shall be subscribed, exclusive of said ferry, it shall be the duty of said commissioners to call a meeting of said stockholders, for the purpose of electing a president and four directors of said bridge company. And said president and directors, when elected, shall take an oath faithfully to discharge the duties of directors of said corporation, and continue in office for one year, and until their successors shall be duly qualified.

SEC. 5. And be it further enacted, That said president and directors shall have power to make and perform all necessary contracts for erecting said bridge, and carrying on all other business of said corporation; and they shall have power to appoint all officers, and employ such servants as may be necessary for managing the affairs

of said corporation; and that the stockholders shall be individually liable in proportion to their respective shares for all contracts made, bonds, bills, notes executed by said president and directors in the name of said corporation, whether the same be under its seal or not.

SEC. 6. And be it further enacted, That if any subscriber of stock in said bridge company, shall fail to pay his installments as required by said president and directors, they shall have power to declare such shares forfeited to the company; and after giving thirty days' public notice, to offer them for sale at public auction, for ready money, or so many as will be sufficient to pay the amount then due and called in. A sale thus made shall vest the purchaser with all the rights of the original holder, but shall not release such holder from the payment of any balance that may be due on his subscription, should the stock sold produce less than the whole
16 amount subscribed therefor; and should the money called in be paid before a sale actually takes place, together with the costs incurred preparatory to such sale, it shall restore the stock to the original holder, notwithstanding the forfeiture.

SEC. 7. And be it further enacted, That the rates of toll for crossing on said bridge shall never exceed the present rates of ferr-age at said ferry. And until said bridge shall be completed, the owners of said ferry shall enjoy all the profits arising therefrom, notwithstanding they may have subscribed the interest therein as stock in said bridge company.

SEC. 8. And be it further enacted, That said corporation shall and may hold annual meetings of the stockholders, at which the president and directors shall lay before them an account of their proceedings of the preceeding year, showing all disbursements and receipts of said corporation; at which or some other general meeting of said stockholders, the president and directors of said company shall be elected and at such meeting only shall the capital stock of said bridge company be increased: Provided, that said company shall in no case exercise banking privileges.

Approved January 12th, 1832.

Endorsed: Filed in clerk's office Feb'y 14th, 1895. N. W. Trimble, clerk.

EXHIBIT "B B B."

An act to incorporate the Memphis & Charleston Railroad Company.

SEC. 1. Be it enacted by the General Assembly of the State of Tennessee, That for the purpose of establishing a communication by railroad between Memphis, Tennessee, and Charleston, South Carolina, the formation of a company is hereby authorized, which when formed shall be a body corporate by the name and style of
17 the "Memphis and Charleston Railroad Company;" and by said corporate name shall be capable in law to buy, receive by gift, hold, sell and convey real and personal estate as hereinafter provided; make contracts, sue and be sued, and make by-laws, and do all lawful acts properly incident to a corporation and necessary and proper to the transaction of the business for which it is incor-

porated; and to have and use a common seal, and the same to alter and destroy at its pleasure; and shall have perpetual succession members.

SEC. 2. Books for subscription of eight hundred thousand dollars — the capital stock of said company, in shares of twenty-five dollars each, shall be opened on the first Monday in March 1846; and shall be kept open for six days between the hours of ten o'clock in the morning and four in the evening of each of these days, at following-named places and by the following commissioners, to wit: At Memphis, by Robert C. Brinkley, Lewis Shanks, Robertson Topp, E. S. Shields, John K. Chester, Edwin Hickman, W. W. Hart, Wyatt Christian, G. Gholston, H. H. Means, P. G. Gains, Mat Anderson, Reuben L. Kay, Charles Lofland, Seth Wheatley, Henry G. Smith, M. B. Winchester, Wardlow Howard, George W. Smith, Dr. Dudley Dunn, James F. Leith, John Delafield; at La Grange by John J. Potts, Thomas B. Firth, John W. Burton, E. W. Harris, C. Mitchie, and Thomas Polk; at Somerville by B. Dougless, Levin H. Coe Robert J. Yancey and Lewis P. Williamson; at Bolivar by Pitser Miller, William O. Ferguson, J. J. Williams, Horace Polk, John H. Bills, C. H. Horion, Calvin Jones, and C. P. Polk; at Purdy by W. J. Wisdom, James Reed, Alfred Moore, B. B. Adams, P. P. Breaden, W. C. Kendall; at Savannah by James Erwin, L. H. Broyles, David Robinson, E. H. Shelton, and A. H. Hardin, at Palmyra (Gibbs' Landing) by Lewis H. Well, A. H. Kendall, and Isham P. Gibbs.

SEC. 3. The said commissioners, or a majority of them, at each of the places aforesaid, shall receive subscription for stock in the said railroad company during the time the said books are directed
18 to be kept open, and on each share so subscribed, shall demand and receive the sum of fifty cents.

SEC. 4. As soon as the time for receiving subscriptions as aforesaid shall have expired, the said commissioners shall respectively deposit all the money so received by them in incorporate bank, redeeming its notes in specie, to the credit of the Memphis and Charleston Railroad Company and subject to the order of the president of the board of commissioners hereinafter appointed; and shall also forward a correct list of all the subscribers to said stock, with the number of shares each subscriber has taken, to a board of commissioners to be composed of the following persons: Leroy Pope, E. W. M. King, Austin Miller, Walter B. Morris, W. S. Wisdom, Silas Beech, William Armour, and John Delafield, who may establish rules to govern their proceedings, choose their own president, and appoint such other officers and agents as they may think proper, and prescribe their duties; and who, or a majority of whom, shall meet at Memphis on the first Monday in May next, ascertain the whole number of shares taken in said company, and publish the same in some newspaper printed in Memphis on or before the first Monday in May next; and if the sum of four thousand shares have been subscribed, on each of which there shall have been paid the sum of fifty cents the Memphis and Charleston Railroad (Company) shall be regarded as formed, and thenceforth and from the day of the closing of the books of the subscription, as aforesaid, the said

subscribers to the stock shall form a body politic and corporate, in deed and in law, by the name and for the purpose aforesaid; and in all things to be represented by the board of commissioners aforesaid, until the election of a board of directors as hereinafter prescribed.

SEC. 5. If on closing the books aforesaid, the sum of four hundred thousand dollars shall not have been subscribed, then and in that case the said board of commissioners, by themselves, or by
19 their agents may receive subscriptions till the said sum be taken; and whenever that sum shall be subscribed, the company shall be considered as formed, as having a corporate existence as aforesaid, and of which notice shall be given as hereinbefore directed; and may proceed to survey the route for the road, and make an estimate of the cost of its construction; and the said board of commissioners may, by themselves or their agents, at such times and places as they may think proper; and upon such terms as to time and manner of payment as they may deem expedient, receive additional subscriptions until the said sum shall have been subscribed, upon which the company may be formed, and the subscribers shall thenceforth form a body corporate as aforesaid: Provided the same shall be done on or before the first day of January, 1849; and for the residue of the original sum the said corporation, when organized, may in like manner receive additional subscriptions.

SEC. 6. In case more than eight hundred thousand dollars shall have been subscribed on closing the books, when they are first opened, the shares shall be reduced to that number by deducting the surplus shares from the highest subscribers, placing them on equality on number, as far as can be done; and after such reduction, the holders of the remaining shares shall form the company, and be interested therein in proportion to the number of shares which they may respectively hold.

SEC. 7. If on closing the books on the first day of January, 1849, said sum shall not have been subscribed, the money paid by each subscriber shall be returned to him by the said board of commissioners, after defraying the expenses of opening the books, and of making the survey, and map of the route and estimate of the cost of the road, which the said commissioners are hereby authorized to have made as soon as practicable.

SEC. 8. The affairs of said company shall be managed by
20 a board of directors, to consist of nine, five of whom shall constitute a quorum, and who shall be chosen by the stockholders from their own body; and a president of the company shall be elected by the directors from among their own number, in such manner as the regulations of the corporation shall prescribe.

SEC. 9. As soon as the said sum shall have been subscribed, it shall be the duty of the commissioners appointed to declare the same, to appoint a time for the stockholders to meet in Memphis, and give notice thereof by publication in some newspaper in Memphis and Somerville, at which time the said stockholders, in person or proxy, shall proceed to elect the directors of the company, and to enact all such regulations rules and by-laws, as may be necessary for the government of the corporation, and the transaction of its

business. The persons elected directors at this meeting shall serve for such period, not exceeding one year, as the stockholders may direct, and at this meeting the stockholders shall fix on the day and place or places when the subsequent elections of directors shall be held, and such elections shall thenceforth be annually made; but if the day of annual elections shall pass without any election of directors, the corporation shall not be thereby dissolved; but it shall be lawful on any other day to hold and make such elections in such manner as may be prescribed by a by-law of the corporation.

SEC. 10. The board of directors may fill all vacancies which may occur in it, during the period for which their board shall have been elected, and in the absence of the president may fill his place by electing a president *pro tempore*.

SEC. 11. All contracts and agreements authenticated by the president of the board, shall be binding on the company, without seal or such other mode of authentication may be used as the company by their by-laws may adopt.

SEC. 12. The board of directors shall not exceed in their
21 contracts the amount of the capital of the corporation and of the funds which the company may have borrowed and placed at the disposal of the board, and in case they should do so, the president and directors who may be present at the meeting at which such contract or contracts, so exceeding the amount aforesaid shall be made, shall be jointly and severally liable for the excess, both to the contractor and contractors and the corporation: Provided, that any one may discharge himself from such liability by voting against such contract or contracts, and causing such vote to be recorded on the minutes of the board, and giving notice thereof to the next general meeting of the stockholders.

SEC. 13. After the route of said railroad shall have been accurately surveyed and adopted, and a plat thereof deposited in the office of the secretary of state, it shall not be lawful for any other road to be built, cut or constructed in any way or manner, or by any authority whatsoever, running *latterly* within twenty miles of the route so adopted; unless by said company or with the consent of the board of directors for the time being.

SEC. 14. The said company shall have the exclusive right of transportation or conveyance of persons, goods, merchandise, and produce over the said railroad by them to be constructed, provided, that the charge of transportation and conveyance shall not exceed thirty-five cents per hundred pounds on heavy articles, and ten cents per cubic foot on articles of measurement, for every hundred miles; and five cents a mile for every passenger; and provided also, that the company may, when they see fit farm out their rights of transportation on said road, subject to the rates above mentioned.

SEC. 15. The board of directors may call for the payment of twenty-four and a half dollars on each share of stock, in sums not exceeding two dollars, in every thirty days; provided, that twenty days' notice be given of such, in at least one public newspaper of the State in which any of the stockholders may reside; and
22 a failure to pay, or secure to be paid according to the rules of the company, any of the installments so called as afore-

said, shall induce a forfeiture of the share or shares on which default shall be so made, and in payment thereon; and the same shall invest and belong to the company, and may be restored to the owner or owners by the board of directors if they deem proper, on the payment of all arrearages on such shares and legal interest thereon or the directors may waive the forfeiture after thirty days' default, and sue the stockholders for the installments due, at their discretion.

SEC. 16. The stock of said company may be transferred in such manner and form as may be directed by the by-laws of said corporation.

SEC. 17. The said company may at any time increase its capital to a sum sufficient to complete the road, and stock it with everything necessary to give it full operation and effect, either by opening books for new stock or by selling such new stock, or by borrowing money on the credit of the company, and on the mortgage of its charter and works, and the manner in which the same shall be done in either case shall be prescribed by the stockholders at a general meeting; and any State or any citizen, corporation or company of this or any other State or country may subscribe for and hold stock in said company, with all the rights and subject (to) all the liabilities of any other stockholder.

SEC. 18. The board of directors shall once in every year at least, make a full report of the state of the company and its affairs, to a general meeting of the stockholders, and oftener if directed by a by-law, and shall have power to call a general meeting of the stockholders, when the board may deem it expedient.

SEC. 19. No person but a citizen of the United States, and being a *bona fide* stockholder in his own right, which he shall have held at least three months previous to his election (except the first) who shall not have held in his own right the share or shares on
23 which he offers to vote, at least three months previous to such election.

SEC. 20. Stockholders may vote in person or by proxy, and in the election of directors and in voting on all questions which come before a meeting of the stockholders, or which may be submitted to a decision of the stockholders in any other manner, the owner of one or more shares shall be entitled to one vote for every share he, she or they may own as aforesaid.

SEC. 21. The said company may purchase, have and hold in fee, or for a term of years, any lands, tenements or hereditaments which may be necessary for said road or appurtenances thereof; or for the erection of depositories, storehouses, houses for the officers, servants or agents of the company; or for workshops or foundries, to be used for said company; or for procuring timber, stones or other materials necessary for the construction of the road, or its appurtenances, or for affecting transportation thereon.

SEC. 22. The said company shall have the right when necessary, to construct the said road or any branch thereof, across or along any public road or water-course; provided, that the said road and the navigation of said water-course shall not thereby be obstructed; and

provided further, that such railroad shall not be located so near any turnpike road — to injure or prejudice the interests of the stockholders in any such turnpike road except upon such terms as may be agreed upon by the president and directors of the same, on behalf of the stockholders.

SEC. 23. The said company may purchase, have and hold any bridge or turnpike road over which it may be necessary to carry the said railroad and when said purchase is made, to hold the said bridge or turnpike road on the same terms, and with all the rights which belong to the individual, individuals or corporation from which said purchase may be made; provided, that the said company shall not obstruct any public road without constructing another as convenient as may be.

SEC. 24. When any lands or right of way may be required by said company for the purpose of constructing their road, and
24 for want of agreement as to the value thereof, or from other cause, the same cannot be purchased from the owners or owner, the same may be taken at a valuation to be made by five commissioners or a majority of them, to be appointed by the circuit court of the county where some part of the land or right of way is situated, and the said commissioners before they act, shall severally take an oath before some justice of the peace, faithfully and impartially to discharge the duty assigned them. In making the said valuation the commissioners shall take into consideration the loss or damage which may occur to the owner or owners, in consequence of the land being taken, or the right of way surrendered, and also the benefit and advantage he, she or they may receive from the erection or establishment of the said road or works, and shall state particularly the nature and amount of each, and the excess of loss or damage over and above the benefit or advantage, shall form the measure of valuation of the said land or right of way. The proceedings of said commissioners accompanied with a full description of the said land or right of way, shall be returned under the hands and seals of a majority of the commissioners, to the court from which the commission issued, there to remain of record. In case either party to the proceedings shall appeal from the valuation to the next session of the court granting the commission, and give reasonable notice to the opposite party of such, the court shall order a new valuation to be made by a jury who shall be charged therewith, in the same term or as soon as practicable, and their verdict shall be final and conclusive between the parties, unless a new trial shall be granted; and the land or right of way so valued by the commissioners or jury shall vest in the said company in simple fee as soon as the valuation may be paid, or when refusal may be tendered. When there may be an appeal, as aforesaid, from the valuation of the commissioners by either of the parties, the same shall not prevent the works to be constructed from proceeding, but
25 where the appeal is by the company requiring the surrender, they shall be at liberty to proceed in their works only on condition of giving to the opposite party a bond with good security, to be approved by the clerk of the court where the valuation is re-

turned, in a penalty equal to double the said valuation, conditioned for a payment of said valuation and interest, in case the same be sustained; and in case it be reversed for the payment of the valuation thereafter to be made by the jury and confirmed by the court; provided, that when the land cannot be had by gift or purchase, the operations of the work are not to be hindered or delayed during the pendancy of any proceeding to assess its value, as aforesaid, nor shall any injunction or supersedeas be awarded by any judge or court, to delay the progress of said work.

SEC. 25. In the absence of any contract with the company in relation to the lands through which the said road may pass, signed by the owner thereof, or by his agent, or any claimant or person in possession thereof, which may be confirmed by the owner, it shall be presumed that the land upon which the said road may be constructed, together with the space of one hundred feet on each side of the center of the said road, has been granted to the company — shall have good right and title thereto, and shall have hold and employ the same, as long as the same be used for the purposes of the road and no longer, unless the person or persons owning the said lands at the time that part of the road which may be on said land was finished, or those claiming under him, her or them, shall apply for an assessment for the value of the said lands, as hereinbefore directed, within five years next after that part of the road was finished; and in case the said owner or owners, or those claiming under him, her or them, shall not apply for such assessment within five years next after the said part was finished, he, she or they shall be forever barred from recovering the said land or any assessment or compensation thereof; provided, nothing herein contained shall affect the rights of *femes covert* or infants, until two years after the removal of their respective disabilities.

SEC. 26. If any person shall intrude upon the said railroad, or any part thereof, by any manner of use thereof, of the rights or privileges connected therewith, without the permission or contrary to the will of said company, he, she or they, shall forthwith forfeit to the said company all the vehicles that may be so intruded on said road and the same may be recovered by suit at law; and the person or persons so intruding may also be indicted for misdemeanor, and upon conviction fined and imprisoned by any court of competent jurisdiction.

SEC. 27. If any person shall wilfully and maliciously destroy, or in any manner hurt, damage or obstruct the said railroad, or any bridge or vehicle used for, or in the transportation therein such person or persons so offending shall be liable to be indicted therefor, and on conviction shall be imprisoned not more than six or less than one month, and pay a fine of not less than twenty dollars, and shall be further liable to pay all the expenses of repairing the same, and it shall not be competent for any person so offending against the provisions of this clause, to defend himself by pleading or giving in evidence, that he was the owner or agent, or servant of the owner of the land where such destruction, hurt, damage, injury, or

obstruction was done or caused, at the time the same was caused or done.

SEC. 28. Every obstruction to the safe or free passage of vehicles on the said road shall be deemed a public nuisance, and may be abated as such by an officer, agent or servant of the company; and the person causing such obstruction may be indicted and punished for erecting a public nuisance.

SEC. 29. The said company shall have the right to take at the storehouses they may establish or annex to their roads, all goods, wares, merchandise and produce intended for transportation; prescribe the rules of priority, and charge and receive such just
27 and reasonable compensation for storage as they, by rules may establish, (which they shall cause to be published) or as may be fixed by agreement with the owner; which may be distinct from the rates of transportation; provided, that the said company shall not charge or receive storage on goods, wares, merchandise, or produce which may be delivered to them at their regular depositories for immediate transportation, and which the company may have the power of transporting immediately.

SEC. 30. The profits of the company or so much thereof as the board of directors may deem advisable shall, when the affairs of the company will permit, be semi-annually divided among the stockholders in proportion to the stock each may hold.

SEC. 31. The said company is hereby expressly prohibited from carrying on any banking operations; but may effect insurance on lives and property transported on the road.

SEC. 32. Whenever in the construction of said road, it shall be necessary to cross or intersect any established road or way, it shall be the duty of the company to construct said road across such established road or way, so as not to impede the passage or transportation of persons or property along the same, or when it shall be necessary to pass through the land of an individual, it shall be their duty to provide for such individual a proper wagon way or ways across said road from one part of his land to the other.

SEC. 33. The said company shall possess such additional powers as may be convenient for the due and successful execution of the powers granted in this charter, and for the successful construction and management of the work.

SEC. 34. This charter shall be amendable from time to time by the legislature, whenever the president and directors shall unanimously petition for amendments, specifying in the petition the nature of such amendments, and when such amendments shall be adopted by the legislature and submitted to the directory
28 and be accepted and adopted unanimously by the president and directors, they shall be obligatory on the stockholders and not otherwise.

SEC. 35. The president, directors, clerks, agents, officers and servants of said company shall be exempt from military duty, except in cases of invasion, and insurrection, and shall also be exempt from serving on juries and working on public roads.

SEC. 36. The company shall have full power and authority to

purchase and own such number of slaves as may be necessary for the construction of said road and keeping the same in repair.

SEC. 37. If by decree or otherwise the said corporation shall be dissolved, the president and directors of said company are created trustees with such power only as may be necessary to collect the debts due the company, preserve the property, pay the debts, and distribute the property and effects of the company, to those who may be entitled thereto, under the charter.

SEC. 38. The capital stock of said company shall be forever exempt from taxation, and the road with all its fixtures and appurtenances, including workshops, warehouses and vehicles of transportation, shall be exempt from taxation for a period of twenty years, from the completion of the road, and no longer.

SEC. 39. The railroad authorized by this act shall be commenced within three years after the passage of this act, and shall be finished within six years thereafter, otherwise the charter hereby granted shall be void.

SEC. 40. Any individual or individuals, company or body corporate, with the permission of the legislature of this State, may hereafter construct branches to unite with the said Memphis and Charleston railroad; and it shall be the duty of the said company, when required to receive on their road the full loaded freight cars from such branches, and transport the same to their destination, and return them without changing the loads thereof, or
29 charging for the transportation of the goods, wares, merchandise and produce therein any greater rate of freight than they charge for similar goods, wares, merchandise and produce in their own cars, provided, that the company shall not be compelled to receive such cars on their road, unless they are constructed in the same manner and are of equal strength with their own cars, of which the engineer of the main road shall be the judge; and provided, that the company shall not be required to receive any car from any such branches without receiving payment for at least twenty miles' transportation; and provided also that said company shall be entitled in all respects to similar and equal privileges on any branches constructed to unite with their road, subject to the same restraints.

SEC. 41. Be it enacted, That said railroad shall commence at or near where Union street crosses the La Grange and Memphis railroad, in the town of Memphis, the place where the depot of said La Grange and Memphis railroad is now situated; thence running in an easterly direction, to such point on the southern bound-ry line of the State of Tennessee, or such point on the Tennessee river in said State as the said Memphis and Charleston Railroad Company, when organized may determine, to be the most favorable route, to form the continuous railway communication or railway and water communication from the city of Memphis to the city of Charleston; provided, that the company hereby incorporated shall not locate their road on the track of the Memphis and La Grange railroad without first procuring the consent of the said Memphis and La Grange Railroad Company, on such terms as the companies may

agree upon; and provided the said Memphis and Charleston Railroad Company shall first pay or secure to be paid such sum of money for the interest of the State in the track of the Memphis and La Grange railroad, as may be agreed upon by the board of internal improvement, whereupon the said board shall have power and are hereby authorized to convey such interest to the Memphis
30 and Charleston Railroad Company; which transfer shall be made under the advice of the attorney general of the State: provided, that nothing herein contained shall be so construed as to fix the point at which said road shall commence or terminate at said city of Memphis: Provided, that nothing herein contained shall be so construed as to authorize the company herein incorporated to lay off and construct the road mentioned in this charter until such company shall have first purchased of the State the interest which she owns in the Memphis and La Grange Railroad Company; and provided further, that said commissioners under the sanction of the attorney general of the State, shall have power to take stock in said company to the amount of the interest of the State or require the payment to be made in money as they in their discretion may think will best promote the interest of the State.

BROOKINS CAMPBELL,
Speaker of the House of Representatives.
H. M. WATTERSON,
Speaker of the Senate.

Passed February 2nd, 1846.

Endorsed: Filed in clerk's office Feb'y 14th, 1895. N. W. Trimble, clerk.

EXHIBIT "C C C."

An act to incorporate the Memphis and Charleston Railroad Company.

Whereas, an act was passed by the State of Tennessee, bearing date the 2nd day of February, 1846, and the same was amended by an act of the same State, dated February 4th, 1848, for the formation of a company, under the name and style of the "Memphis and Charleston Railroad Company" for the purpose of establishing a communication, by railroad, between Memphis, Tennessee, and Charleston, South Carolina; and whereas, it is believed that the most eligible route for said road is through a portion of this State; and whereas, it is also believed that great and lasting benefits will accrue to the inhabitants of this State from said improve-
31 ment, therefore,

SEC. 1. Be it enacted by the senate and house of representatives of the State of Alabama, in General Assembly convened, That the said company shall have the right of way through the territory of this State to construct their road along the valley of the Tennessee river to the town of Huntsville, and thence to some point on the Nashville and Chattanooga railroad, or to some point on the

Georgia, or other railroad leading eastwardly, so as to communicate with Charleston and other Atlantic ports; and that said company shall have the right of way over the bed or bank of the Muscle Shoals canal, provided it can be found necessary in the construction of said road, and shall also have the right of way through the lands belonging to the State of Alabama, or to the Bank of the State of Alabama, or to any of the branch banks of the said State, together with the right to use any stone, timber, or other materials on said lands, necessary in the construction of said road; and said company shall have and enjoy all the rights, powers, and privileges granted to them by the acts of incorporation above mentioned, and shall be subject to the liabilities and restrictions imposed by the same, together with the following requirements.

SEC. 2. And be it further enacted, That in the event said road shall be located through Tuscumbia, it shall be the duty of the company to construct a branch to Florence; and in the event said road shall pass on the north side of the Tennessee river near Florence, it shall be the duty of said company to construct a branch to Tuscumbia provided, that the subscription in the town or county, applying for such branch, shall be fully sufficient to pay for the costs of the same.

SEC. 3. And be it further enacted, That said company shall be authorized and required to open books for the subscription of stock in the capital stock of the said corporation in the State of Ala-
32 bama, so as to afford the citizens thereof an opportunity to take stock to the amount of fifteen hundred thousand dollars of the capital stock of said company; provided, that if said fifteen hundred thousand dollars be not subscribed in Alabama, within ninety days after the books are opened, then it may be taken elsewhere.

SEC. 4. And be it further enacted, That the said company shall, at the first meeting of the stockholders, designate a time when, and place or places, in north Alabama, where, for the convenience of the citizens of the State who may be stockholders, the subsequent elections for directors shall be held, and give notice thereof in one or more newspapers published in north Alabama; and said elections shall be held at the same time, both in this State and in Tennessee.

SEC. 5. And be it further enacted, That the moneys subscribed by the citizens of Alabama, whether by the State, counties, corporations or individuals, shall first be applied to the construction of the road within the limits of the State of Alabama, and said moneys shall be placed in some safe depository in north Alabama until required for use; provided, that nothing in this section shall be so construed as to prevent the company from putting under contract the whole road, whenever, in their estimation, a sufficient amount of funds shall have been obtained.

SEC. 6. And be it further enacted, That said company shall not charge for the transport-ion of persons, or property, any higher rates on one part than another of said road; but the toll shall be equal

and uniform on every part of said road for articles of the same description, whether passing in one direction or the other.

SEC. 7. And be it further enacted, That the company hereby incorporated, shall not locate their road on the track of the Tennessee Valley railroad, nor of any other railroad which has heretofore been chartered by this State; provided, companies have been organized under the same, without first procuring the assent
23 by agreement with said companies; but it shall be lawful for the company hereby incorporated to acquire, by purchase, gift, release, or otherwise, from any other company, all the rights, privileges, and immunities of said company, and possess and enjoy the same as full as they were, or could be possessed, or enjoyed by the company making the transfer.

SEC. 8. And be it further enacted, That any railroad company now chartered, or hereafter to be chartered in this State, shall have the right to connect their road with the road authorized by this act.

SEC. 9. And be it further enacted, That nothing contained in this act shall prevent the State of Alabama, from levying and collecting such taxes on the property of said company within this State, as shall by the General Assembly of the State be assessed on the property of other railroads in this State, nor shall anything therein be construed so as to prevent the chartering and building of other railroads in this State, coming within any distance whatever of said road, anything in the said law of Tennessee to the contrary notwithstanding.

Approved 7th January, 1850.

Endorsed: Filed in clerk's office Feb'y 14th, 1895. N. W. Trimble, clerk.

EXHIBIT "D D D."

Values of Florence Bridge as Agreed upon by Contract with N. F. & S. R'y Co.

Value when ready to renew	$118,372.14
Added value when renewed	111,732.97
Total value	$230,105.11
Proportion assigned as value of toll-bridge is 22.2 per cent	$51,083.33
Interest on value of toll-bridge at .07 %	3,575.83

34 *Expenses of Florence Bridge Years Ending January 31st—*

	1892–'3.	1893–'4.	1894–'5.
Maintenance	$1,950.12	$1,857.91	$1,161.16
21.6% of above	$421.22	$401.31	$250.81
Salary day toll-keeper	540.00	528.75	492.75
" night "	540.00	528.75	492.75
½ salary of engineer	270.00	264.38	246.37
Total expense	$1,771.22	$1,723.19	$1,482.68
Gross earnings	4,291.43	3,526.82	3,273.87
Net earnings	$2,520.21	$1,803.63	$1,791.19
Interest at 7%	3,575.83	3,575.83	3,575.83
Net loss	$1,055.62	$1,772.20	$1,784.64

NOTE.—Percentage allowed toll-bridge for maintenance is 21.6 per cent. of total maintenance.

Earnings for Years—

	1892–'3.	1893–'4.	1894–'5.
	$4,291.43	$3,526.82	$3,273.87
Expenses for year	1,771.22	1,723.19	1,482.68
Net earnings	$2,520.21	$1,803.63	$1,791.19

Earnings at Present Rates of Toll for Years—

1892–'3.	1893–'4.	1894–'5.
$4,291.43	$3,526.82	$3,273.87

Earnings at Rates Fixed by General Assembly ½.

	$2,145.71	$1,763.41	$1,636.93
Expenses	1,771.22	1,723.19	1,482.68
Earnings	$374.49	$40.22	$154.25
Interest	3,575.83	3,575.83	3,575.83
Net loss	$3,201.34	$3,535.61	$3,421.58

35 *Subpœna in Equity.*

Circuit Court of the United States for the Northern District of Alabama, Northern Division.

The President of the United States to the marshal of said district, Greeting:

You are hereby commanded to summon William C. Oates, as governor of the State of Alabama, if to be found in your district, that

he, laying aside all excuse, appear personally at the office of the clerk of the circuit court of the United States for the northern division of the northern district of Alabama, in the city of Huntsville, in said district, on the rule day to be held on the first Monday in April next, to answer, plead, or demur to the bill of complaint exhibited in said circuit court by C. M. McGhee and Henry Fink, receivers of Memphis & Charleston R. R. Co., complain-t, against The State of Alabama, Wm. C. Oates, as governor of the State of Alabama, and Wm. C. Fitts, as attorney general of the State of Alabama, defendant-, a copy of which bill will be furnished on application to the clerk. Herein fail not, and have you then and there this precept with your return thereon endorsed.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 14 day of February, [SEAL.] in the year of our Lord one thousand eight hundred and ninety-five.

Attest: N. W. TRIMBLE,
Clerk U. S. Cir. Court, Nor. Dist. of Ala.

A true copy.
N. W. TRIMBLE, *Clerk.*

MEMORANDUM.—The above-named defendants are notified that unless they and each of them shall enter their appearance or file their plea, answer, or demurrer to said bill in the clerk's office of the said court, at Huntsville aforesaid, on or before the day 36 to which the above writ is returnable (or the next rule day thereafter), the complainants' information will be taken against them as confessed and a decree entered accordingly.

N. W. TRIMBLE, *Clerk.*

The marshal is required to execute this writ twenty days before the return day hereof.

Endorsed: Executed by serving a copy of the within subpœna in equity on W. C. Oates, as gov'r of the State of Alabama, at Montgomery, Ala., this the 16th day of February, 1895. W. H. Tisdale, U. S. marshal, by Wm. F. Adams, deputy.

Endorsed: Returned and filed this 18th day of February, 1895. N. W. Trimble, clerk.

Subpœna in Equity—W. C. Fitts, as Attorney General.

In the Circuit Court of the United States for the Northern District of Alabama, Northern Division.

The President of the United States to the marshal of said district, Greeting:

You are hereby commanded to summon William C. Fitts, as attorney general of the State of Alabama, if to be found in your district, that he, laying aside all excuse, appear personally at the office of the clerk of the circuit court of the United States for the northern division of the northern district of Alabama, in the city of Hunts-

ville, in said district, on the rule day to be held on the first Monday in April next, to answer, plead, or demur to the bill of complaint exhibited in said circuit court by C. M. McGhee and Henry Fink, as receivers of Memphis & Charleston Railroad Company, and Memphis & Charleston Railroad Company, complainants, against The State of Alabama, Wm. C. Oates, as governor of the State of Alabama, and Wm. C. Fitts, as attorney general of the State of Alabama, defendant, a copy of which bill will be furnished on application to the clerk. Herein fail not, and have you then and there this precept with your return thereon endorsed.

Witness the Hon. Melville W. Fuller, Chief Justice
[SEAL.] 37 of the Supreme Court of the United States, this 14th day of February, in the year of our Lord one thousand eight hundred and ninety-five. Issued the 14th day of February, in the year of our Lord one thousand eight hundred and ninety-five.

Attest: N. W. TRIMBLE,
Clerk U. S. Circuit Court, Northern Dist. of Ala.

MEMORANDUM.—The above-named defendants are notified that unless they and each of them shall enter their appearance or file their plea, answer, or demurrer to said bill in the clerk's office of the said court, at Huntsville aforesaid, on or before the day to which the above writ is returnable (or the next rule day thereafter), the complainants' information will be taken against them as confessed and a decree entered accordingly.

N. W TRIMBLE, *Clerk.*

The marshal is required to execute this writ twenty days before the return day thereof.

Endorsed: Executed by serving a copy of the within subpœna in equity on Wm. C. Fitts, as attorney general of the State of Alabama, at Montgomery, Ala., this the 16th day of February, 1895. W. H. Tisdale, U. S. marshal, by Wm. F. Adams, deputy.

Endorsed: Returned and filed this 18th day of February, 1895. N. W. Trimble, clerk.

Subpœna in Equity—State of Alabama.

In the Circuit Court of the United States for the Northern District of Alabama, Northern Division.

The President of the United States to the marshal of said district, Greeting:

You are hereby commanded to summon the State of Alabama, if to be found in your district, that —, laying aside all excuse, appear personally at the office of the clerk of the circuit court of the United States for the northern division of the northern district of Alabama, in the city of Huntsville, in said district, on the rule day to
38 be held on the first Monday in April next, to answer, plead, or demur to the bill of complaint exhibited in said circuit court by C. M. McGhee and Henry Fink, as receivers of the Mem-

phis & Charleston Railroad Co., and Memphis & Charleston Railroad Company, complainant-, against The State of Alabama, Wm. C. Oates, as governor of the State of Alabama, and Wm. C. Fitts, as attorney general of the State of Alabama, defendants. A copy of said bill will be furnished on application to the clerk. Herein fail not, and have you then and there this precept with your return thereon endorsed.

Witness the Hon. Melville W. Fuller, Chief Justice of
[SEAL.] the Supreme Court of the United States, this 14th day of Feb'y, in the year of our Lord one thousand eight hundred and ninety-five.

Issued the 14th day of February, in the year of our Lord one thousand eight hundred and ninety-five.

Attest: N. W. TRIMBLE,
Clerk U. S. Circuit Court, Northern District of Ala.

MEMORANDUM.—The above-named defendants are notified that unless they and each of them shall enter their appearance or file their plea, answer, or demurrer to said bill in the clerk's office of the said court, at Huntsville aforesaid, on or before the day to which the above writ is returnable (or the next rule day thereafter), the complainants' information will be taken against them as confessed, and a decree entered accordingly.

N. W. TRIMBLE, *Clerk.*

The marshal is required to execute this writ twenty days before the return day thereof.

Endorsed: Executed by serving a copy of the within subpœna in equity on Wm. C. Oates, as gov'r of the State of Alabama, at Montgomery, Ala., Feb'y 16th, 1895. W. H. Tisdale, U. S. marshal, by Wm. F. Adams, deputy.

Endorsed: Returned and filed this 18th day of Feb'y, 1895. N. W. Trimble, clerk.

39 *Order Granting Temporary Writ of Injunction.*

In the Circuit Court of the United States for the Northern District of Alabama, Northern Division.

C. M. McGHEE and HENRY FINK, as Receivers of M. & C. R. Co., and M. & C. R. Co., Complainants,
vs.
THE STATE OF ALABAMA *et als.*, Defendants. } No. 213. Equity.

Upon reading the verified bill of complaint in the above-entitled cause and upon due consideration thereof it is—

Ordered, adjudged, and decreed that the temporary writ of injunction issue, as prayed for therein, restraining and enjoining the said William C. Oates, as governor of the State of Alabama, and the said William C. Fitts, as attorney general of the State of Alabama, defend-

ants in this cause, and all persons whomsoever from instituting or prosecuting any proceedings against the said complainants in said bill, namely, Charles M. McGhee and Henry Fink, as receivers of the Memphis and Charleston Railroad Company, and said Memphis and Charleston Railroad Company or either of them under the forfeiture clause set out in the second section of the act of the General Assembly of Alabama approved Feb'y 11th, 1895, entitled "An act to fix the maximum of tolls to be charged by the owners, lessees, or operators of the road bridge crossing the Tennessee river between the counties of Colbert and Lauderdale and known as the Florence bridge, and to fix the penalty for demanding or receiving a higher rate of toll."

It is further ordered, adjudged, and decreed that the first day of March, 1895, and Montgomery, Alabama, be, and they are hereby, fixed a time and place for hearing argument as to whether this restraining order shall be made permanent.

Let a copy of this order be served upon each of the defendants to this cause at least ten days before said date fixed for hearing of argument thereon.

Done at Montgomery, Ala., this 16th day of February, 1895.

JOHN BRUCE, *Judge.*

40 Endorsed: A copy of the within order was served on the defendant William C. Oates, as governor of the State of Alabama, W. C. Oates for the State of Alabama, as governor, William C. Fitts, as attorney general of the State of Alabama, on the 16th day of February, 1895, by delivering to and leaving with them a copy thereof, and at the same time showing him the original with the seal of the court attached. Done Feb'y 16th, 1895. W. H. Tisdale, U. S. marshal, by W. F. Adams, deputy marshal.

Endorsed: Filed Feb'y 16th, 1895. N. W. Trimble, clerk.

Motion to Dismiss.

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

CHARLES M. McGHEE and HENRY FINK, as Receivers of the Memphis & Charleston Railroad Company, and said Memphis & Charleston Railroad Company, Complainants,	
vs.	No. 213. Equity.
THE STATE OF ALABAMA, WM. C. OATES, as Governor of the State of Alabama, and Wm. C. Fitts, as Attorney General of the State of Alabama, Defendants.	

Come the defendants specially for this motion, and move the court to dismiss the bill filed in the above-entitled cause, and for ground of this motion says:

First. This suit is a suit against the State of Alabama, and is prohibited by the 11th amendment of the Constitution of the United States.

Wherefore defendants pray that the bill be dismissed out of this court.

WILLIAM C. FITTS,
Attorney General.
JOS. H. NATHAN,
Counsel for Defendants.

Endorsed: Filed March 13, 1895. John Bruce, judge.

41 *Amendments to Bill.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

CHARLES M. McGHEE and HENRY FINK, as Receivers of the Memphis & Charleston Railroad Company, and said Memphis & Charleston Railroad Company, Complainants,
vs.
THE STATE OF ALABAMA, WM. C. OATES, as Governor of the State of Alabama, and Wm. C. Fitts, as Attorney General of the State of Alabama, Defendants.
} No. 213. Equity.

To the honorable judges of said court:

Complainants in the above-entitled cause, by leave of the court first had and obtained, amend the original bill of complaint in this cause by adding to the averments of fact or stating clause of the bill the following paragraphs:

"15th. Complainants further show unto your honors that since the approval of the said act of the General Assembly of Alabama fixing the rate of tolls over said bridge frequent and numerous demands have been made by persons on foot and persons on horseback and persons in vehicles of the toll-gate keeper at said bridge to pass them over at the rate of toll fixed by said act, and upon the refusal of the toll-gate keeper to permit them to pass over the bridge by the payment of the rates so fixed and his requiring them to pay the rates of toll fixed by the complainants as aforesaid they have paid the tolls so required of them under protest, and have threatened to institute suit or suits against the complainants under the penalty clause of said act, and have also threatened to procure proceedings to be instituted by the governor of the State of Alabama, said W. C. Oates, and the attorney general of the State of Alabama, said Wm. C. Fitts, in the name of the State of Alabama, by a mandamus or otherwise in the courts to compel these complainants to pass people over the said bridge at the rates fixed by the said act,

and the said persons have also threatened to procure proceed-
42 ing to be instituted in the name of the State of Alabama for a forfeiture of the franchise of the Memphis and Charleston Railroad Company in and to the said bridge property because of the failure and refusal to observe and obey the requirements of said act in reference to the rates of toll to be charged over said bridge; and complainants show that the persons so protesting and threatening suits are too numerous to be made parties to this suit, and they especially show that one Wm. H. Gilliam, who is a resident citizen of Colbert county, Alabama, is one of the parties or persons who have made these threats of suits and proceedings as aforesaid.

16th. Complainants would further show that the persons so threatening to institute suits under the said penalty clause of this statute are so numerous that it would be impossible to make them parties defendant to this bill, and complainants allege and show that they are fearful and apprehensive that a proceeding will be instituted in the name of the State of Alabama, by mandamus proceeding or otherwise, to require these complainants to observe and obey the said act in regard to the rates of toll charged on said bridge, and they also fear and are apprehensive that proceedings will be instituted in the name of the State of Alabama to forfeit the chartered rights and privileges of the Memphis & Charleston Railroad Company in and to the said bridge property."

And also by amending the prayer for process and relief as follows: By making the said Wm. H. Gilliam a party defendant to the said cause.

And to the prayer for relief adding the following just before the prayer for general relief: "Complainants pray that an injunction be granted prohibiting and restraining the said Wm. C. Oates, as the governor of the State of Alabama, and the said Wm. C. Fitts, as the attorney general of the State of Alabama, and the said Wm. H. Gilliam and all persons whomsoever from instituting or procuring the institution of any proceeding against these complainants,
43 or either of them, by mandamus or otherwise, to compel the observance and obedience of said act in reference to the rate of tolls fixed thereby over the said bridge, and also from instituting or procuring to be instituted any proceeding against these complainants, or either of them, for the forfeiture of the franchise of the Memphis & Charleston Railroad Company in and to the said bridge on account of the refusal to charge the rates of toll over it fixed by said act."

HUMES, SHEFFEY & SPEAKE,
Attorneys for Complainant-.

Before me, E. B. Anderson, a notary public in and for Madison county, State of Alabama, this day personally appeared N. K. White, who, being first duly sworn, says that he is the law and stock agent of the complainant in the above-entitled cause and as such authorized to make this affidavit; that the allegations of the foregoing

amendment are true, according to the best of his knowledge, information, and belief.

April 6th, 1895.

N. K. WHITE,
Law & Stock Agent Memphis & Charleston Railroad Company.

E. B. ANDERSON,
Notary Public.

Endorsed: Filed in clerk's office April 27th, 1895. N. W. Trimble, clerk.

Restraining Order.

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

CHARLES M. McGHEE and HENRY FINK, as Receivers of the Memphis & Charleston Railroad Company, and said Memphis & Charleston Railroad Company, Complainants, *vs.* THE STATE OF ALABAMA, WM. C. OATES, as Governor of the State of Alabama, and Wm. C. Fitts, as Attorney General of the State of Alabama, Defendants.	No. 213. Equity.

44 In the above-entitled cause, upon reading and considering the verified bill as amended in said cause, it is hereby ordered, adjudged, and decreed that William C. Fitts, as attorney general of the State of Alabama, and William H. Gilliam, and all persons whomsoever, are hereby restrained, enjoined, and prohibited from instituting or procuring the institution of any proceeding against these complainants or either of them, by mandamus or otherwise, to compel the observance and obedience of said act in reference to the rate of tolls fixed thereby over the Florence bridge across the Tennessee river, in the counties of Lauderdale and Colbert, and from instituting or procuring to be instituted any proceedings against these complainants or either of them for the forfeiture of the franchise of the Memphis & Charleston Railroad Company in and to the said bridge on account of the refusal to charge the rates of toll over it, fixed by the said act, until the further orders of this court.

Let copies of this restraining order be served upon each of the defendants in the above-entitled cause.

ALECK BOARMAN, *Judge.*

Executed by serving a copy of the within on William H. Gillam, at Tuscumbia, Ala., May 11th, 1895.

J. C. MUSGROVE,
U. S. Marshal,
By J. V. MUSGROVE, *Deputy.*

Endorsed: Filed in clerk's office April 27th, 1895. N. W. Trimble, clerk.

Subpœna in Equity.

Circuit Court of the United States for the Northern District of Alabama, Northern Division.

The President of the United States to the marshal of said district, Greeting:

You are hereby commanded to summon William H. Gil-
45 liam, if to be found in your district, that he, laying aside all excuse, appear personally at the office of the clerk of the circuit court of the United States for the northern division of the northern district of Alabama, in the city of Huntsville, in said district, on the rule day to be held on the first Monday in June next, to answer, plead, or demur to the amended bill of complaint exhibited in said circuit court by C. M. McGhee and Henry Fink, as receivers of Memphis & Charleston R. R. Co., complainants, against The State of Alabama, Wm. C. Oates, as governor of Alabama, & W. C. Fitts, as attorney general of Alabama, defendant-, a copy of which amended bill will be furnished on application to the clerk. Herein fail not, and have you then and there this precept, with your return thereon endorsed.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 29th day of April,
[SEAL.] in the year of our Lord one thousand eight hundred and ninety-five.

Issued the 29 day of April, in the year of our Lord one thousand eight hundred and ninety-five.

Attest: N. W. TRIMBLE,
Clerk U. S. Cir. Court, Nor. Dist. of Ala.

N. W. TRIMBLE, *Clerk.*

MEMORANDUM.—The above-named defendants are notified that unless they and each of them shall enter their appearance or file their plea, answer, or demurrer to said bill in the clerk's office of the said court, at Huntsville aforesaid, on or before the day to which the above writ is returnable (or the next rule day thereafter), the complainants' information will be taken against them as confessed and a decree entered accordingly.

N. W. TRIMBLE, *Clerk.*

The marshal is required to execute this writ twenty days before the return day thereof.

46 Executed by serving a copy of the within subpœna in equity on Wm. H. Gilliam, at Tuscumbia, Alabama, May 11th, 1895. This the 11th day of May, 1895.

J. C. MUSGROVE,
U. S. Marshal,
By J. V. MUSGROVE, *Deputy.*

Endorsed: Returned and filed this 11th day of May, 1895. N. W. Trimble, clerk.

Order Setting for Hearing.

C. M. McGHEE & HENRY FINK, Receivers, etc.,
vs.
STATE OF ALABAMA, ETC.

This cause coming on to be heard, come the parties, by solicitors, *parties by solicitors*, and on motion, for good cause shown *cause shown*, it is ordered that the hearing be set down for Friday, November 1st, 1895.

Notice of Hearing.

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

CHARLES M. McGHEE and HENRY FINK, as Receivers of the Memphis & Charleston Railroad Company, and said Memphis & Charleston Railroad Company, Complainants,
vs.
THE STATE OF ALABAMA, WM. C. OATES, as Governor of the State of Alabama, and Wm. C. Fitts, as Attorney General of the State of Alabama, and Wm. H. Gilliam, Defendants.
No. 213. Equity.

To Hon. Wm. C. Fitts and J. H. Nathan, solicitors for the defendants in the above-entitled cause:

You are hereby notified that the complainants will make application to the Honorable John Bruce, at Montgomery, Alabama, on Monday, January 27th, 1896, for the allowance of a supplemental amendment to the original bill of complaint in the above-entitled cause, as shown by the copy of said proposed supplement, which is hereto attached and made a part of this notice.

HUMES, SHEFFEY & SPEAKE,
Sol's for Complainant-.

Endorsed: Executed by serving a copy on J. H. Nathan, Esq., solicitor for the defendants, Jan'y 21st, 1896. J. C. Musgrove, U. S. marshal, by J. V. Musgrove, deputy.

Endorsed: Returned and filed Jan. 7th, 1896. N. W. Trimble, clerk.

47 *Application for Permission to File Amended Bill of Complaint.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

CHARLES M. McGHEE and HENRY FINK, as Receivers of the Memphis and Charleston Railroad Company, and said Memphis & Charleston Railroad Company, Complainants,
vs.
THE STATE OF ALABAMA, WM. C. OATES, as Governor of the State of Alabama, and Wm. C. Fitts, as Attorney General of the State of Alabama, and Wm. H. Gilliam, Defendants.
} No. 213. Equity.

To the honorable judges of said court:

The complainants in the above-entitled cause hereby present their application for the allowance of the filing of a supplemental amendment to the original bill of complaint in this cause, which is shown by said proposed supplement hereto attached and made a part of this application.

HUNES, SHEFFEY AND SPEAKE,
Sol's for Complainant-.

Endorsed: Filed in clerk's office Jan'y 7th, 1896. N. W. Trimble, clerk.

Amendment to Bill of Complaint.

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

CHARLES M. McGHEE and HENRY FINK, as Receivers of the Memphis & Charleston Railroad Company, and said Memphis & Charleston Railroad Company, Complainants,
vs.
THE STATE OF ALABAMA, WM. C. OATES, as Governor of the State of Alabama, and Wm. C. Fitts, as Attorney General of the State of Alabama, and Wm. H. Gilliam, Defendants.
} No. 213. Equity.

To the honorable judges of said court:

The complainants in the above-entitled cause, and by leave of the court first had and obtained, make the following supplemental amendment to the original bill of complaint in the cause by
48 adding to the averments of the stating clause of the bill the following paragraphs:

Par. 17. Complainants would further show unto your honors that at the fall term, 1895, of the circuit court of Lauderdale county, Alabama, a large number of indictments—some one hundred in

number—were found by the grand jury of said court against Thomas Clem and G. W. Brabson, who are the toll-gate keepers at the public crossing of said bridge for complainants, the receivers of the Memphis and Charleston Railroad Company. These indictments were found under section 4151 of the Criminal Code of Alabama, which reads as follows:

"4151 (4401). Illegal toll by bridge or turnpike companies.

"Any person, who, being or acting as an officer, agent, servant, or employee of any turnpike company, macadamized road company, or other incorporated road or bridge company, takes, receives or demands any greater charge or toll for travel or passage over such road or bridge, than is authorized by the charter of such company, or, if the charter does not specify the amount of toll to be charged or taken, fixes, prescribes takes, receives or demands any unreasonable charge or toll, to be determined by the jury, must, on conviction, be fined not more than one hundred dollars."

Complainants allege and show unto your honors that these indictments were improperly and wrongfully found against said toll-gate keepers, and they are being improperly prosecuted thereby, because the rate of toll which they have charged is only the rate which has heretofore been fixed by the receivers, which was fixed by them before the passage of said unconstitutional act of the General Assembly of Alabama, reducing the tolls, and is the same rate of tolls which have been charged for more than twenty years by the Memphis & Charleston Railroad Company for the use by the public of said bridge, and the tolls so charged by said toll-gate keepers were authorized by this court, and said indictments have been found and are being prosecuted in violation of the authority of this court and of its orders in the premises, and in violation of
49 the constitutional rights and privileges under the Constitution of the United States, secured to the owners of said bridge in the charging of tolls before crossing it.

Hon. A. H. Carmichael is the solicitor for said judicial circuit, and as such is engaged in the prosecution of said indictments.

The premises considered, your orator prays that said A. H. Carmichael, as solicitor for the eleventh judicial circuit of the State of Alabama, be made a party defendant to this suit, and to this end that subpœna and all other needful process issue to him, and that he and each of the other defendants be required to answer the foregoing averments of this supplemental amendment to the original bill of complaint in this cause, as by note hereunder written is specified.

And your orator further prays a restraining order be issued enjoining the said solicitor and all other persons from the prosecution of said indictments against said toll gate keepers.

And your orator prays for such other and further relief as they may be entitled to under the equities of this case.

HUMES, SHEFFEY & SPEAKE,
Solicitors for Complainants.

The defendants are each required to answer the averments of the foregoing paragraph, No. 17, of this supplement to the original bill of complaint in this cause without oath.

HUMES, SHEFFEY & SPEAKE,
Solicitors for the Complainants.

Endorsed: Filed in clerk's office Jan'y 7th, 1896. N. W. Trimble, clerk U. S. cir. court.

Petition for Leave to File Supplemental Bill.

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

CHARLES M. McGHEE *A* HENRY FINK, as Receivers of the Memphis & Charleston Railroad Company, and said Memphis & Charleston Railroad Co., Complainants, *vs.* WILLIAM C. OATES, as Governor of the State of Alabama; William C. Fitts, as Attorney General of the State of Alabama; A. H. Carmichael, as Solicitor 11th Judicial Circuit of Alabama, and William H. Gilliam, Individually, Defendants.	No. 213.	Equity.

To the honorable judges of said court:

Your petitioners, the complainants in the above-entitled cause, respectfully show unto the court that since the original and amended bills were filed in the above-entitled cause the grand jury of Lauderdale county, State of Alabama, has, under the color of an unconstitutional act passed by the General Assembly of Alabama, which said act is set out in the original bill in this cause, indicted the servants, agents, and employees of the Florence bridge operated by your petitioners, under the orders of this court, and said servants, agents, and employees of petitioners are or will be arrested under said indictments, and A. H. Carmichael, as solicitor of said judicial circuit, will, under the color of said unconstitutional statute, prosecute said employees of petitioners under said indictments, all of which is in violation of the constitutional rights of your petitioners, their agents, servants, and employees, as citizens of the United States. Wherefore your petitioners pray that they may be allowed to file a supplemental bill in said cause, setting up said state of facts. Said bill is herewith exhibited and prayed to be taken and considered as a part of this petition.

And your petitioners pray for such other, further, and different relief as the facts and equities of the case entitle them.

HUMES, SHEFFEY & SPEAKE,
Solicitors for Petitioners.

To William C. Oates, as governor of the State of Alabama; William C. Fitts, as attorney general of the State of Alabama, and William H. Gilliam, individually, or their solicitors of record, William C. Fitts and Joseph Nathan, Esqs.:

You will take notice that on the 1st day of November, 1895, the complainants in the above-entitled cause will ask leave of
51 the court to file a supplemental bill setting up the state of facts alleged in their foregoing petition, at which time and place you can be present and resist the same, of you so desire.

HUMES, SHEFFEY & SPEAKE,
Solicitors for Petitioners.

Endorsed: Filed in clerk's office January 30th, 1896. N. W. Trimble, clerk U. S. cir. court.

Supplemental Bill.

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

CHARLES M. McGHEE and HENRY FINK, as Receivers of the Memphis & Charleston Railroad Company, and said Memphis & Charleston Railroad Co., Complainants, *vs.* WILLIAM C. OATES, as Governor of the State of Alabama; William C. Fifts, as Attorney General of the State of Alabama; A. H. Carmichael, as Solicitor of 11th Judicial Circuit of Alabama, and William H. Gilliam, Individually, Defendants.	No. 213. Equity.

To the honorable judges of said court:

The complainants in the above-entitled cause, by leave of the court first had and obtained, files this supplemental bill of complaint against the above-named defendants, and, thereupon complaining, says:

1. That A. H. Carmichael is a resident citizen of Colbert county, Alabama, and solicitor and prosecuting attorney for 11th judicial circuit of Alabama, composed in part of Lauderdale and Colbert counties, and that since the filing of the original bill in this cause Tom Clemm and G. W. Brabson, employees of and acting as the agents and servants of the complainants Charles M. McGhee and Henry Fink, as receivers of the Memphis and Charleston Railroad Company, appointed under the orders of this court, were engaged in the duties of receiving and collecting tolls for said receivers and of and from persons crossing the bridge in the custody of the said receivers, known as the Florence bridge, across the Ten-
52 nessee river at Florence, Alabama, said tolls being charged and received from persons crossing the public thoroughfare of said bridge; and complainants say that in making the charges

for tolls to all persons crossing said bridge their said servants and agents have charged only the rate prescribed by the receivers under the orders and directions of this court for such tolls, and said tolls so charged and collected are not in excess of those authorized by law.

2. Complainants further allege and show that at the last session of the General Assembly of Alabama an act was passed in reference to the tolls to be charged on said bridge, which act is specifically set out in words and figures in the original bill in this cause and is here now referred to and asked to be considered as a part of this bill; and complainants allege and show that the said act is in violation of the Constitution of the United States, in this, that it fixes a maximum rate of tolls, which is less than that which is authorized to be charged by the owner of said bridge in the act incorporating the bridge, and granting the owner thereof its franchises, privileges, and control. Said act is further unconstitutional because the rate of tolls which it fixes as the maximum rate to be charged for the privilege of crossing said bridge is greatly less than would be a reasonable compensation for the use of said bridge by the public in using it as a crossing and highway, and the rate of tolls so fixed by the General Assembly of Alabama, taking into consideration the gross receipts from tolls of said bridge and the cost of the bridge and of keeping it in repair, is a virtual confiscation of the property in said bridge belonging to the owners thereof, and is in violation of the constitutional rights of said owners, their agents, servants, and employees.

3. These complainants here now refer to and repeat the allegations of said original bill, and ask that said original bill, with its exhibits, be taken and considered as part of this bill.

4. Complainants further allege and show that notwith-
53 standing they and their servants, agents, and employees were acting in pursuance of the orders and directions of this court in receiving and collecting said tolls and in the exercise of the constitutional rights of themselves and the owners of said bridge in the charges therefor, the said Clemm and Brabson, employees of complainants, as aforesaid, have been indicted by the grand jury of the circuit court of Lauderdale county, Alabama, under the provisions of section 4151 of the Criminal Code of Alabama, for having charged persons crossing said bridge a rate of tolls in excess of that fixed by said unconstitutional act of the General Assembly of Alabama. The tolls so charged complainants allege were not in excess of those authorized by the charter granted to the owner of said bridge, and were not in excess — the tolls which the owner had a right under the Constitution of the United States to charge. The number of indictments thus found against the employees and agents and servants of the complainants is about six. Complainants further allege and show that, in pursuance of said indictments, writs of arrest have been issued and placed in the hands of W. R. Waller, sheriff of Montgomery county, and that said sheriff, in pursuance of said writs, has or will arrest the said servants, agents, and employees of said receivers operating said bridge in violation of the constitu-

tional rights of the complainants, their agents, servants, and employees, as citizens of the United States; and complainants further allege that their said agents, servants, and employees are or will be imprisoned and detained of their liberty in violation of the orders and decrees of this court in appointing said receivers and directing them to operate said railroad property, including said bridge; and complainants further allege and show that the proceedings under which said agents, servants, and employees were indicted and against whom writs of arrest have been issued *is* in contempt of the orders and proceedings of this court in the cause now pending herein in which said receivers were appointed, and *is* also in violation and contempt of the orders of this court made upon the original
54 bill in this cause, wherein an injunction was issued and is now in force enjoining the said governor, attorney general, and all persons whomsoever from instituting any suits or proceedings under an act of the General Assembly of Alabama hereinbefore set out and under the forfeiture clause thereof.

5. Complainants further allege that the grand jury of Lauderdale county, claiming to act as officers of the State and under color of an unconstitutional statute, have committed acts of wrong and injury to the rights and property of the complainants, their agents, servants, and employees, acquired under said contract with the State of Alabama, in this, that they have found said indictments against the servants, agents, and employees of complainants in violation of their constitutional rights and privileges as citizens of the United States, and the said A. H. Carmichael, claiming to act as an officer of the State of Alabama and under color of said unconstitutional statute, intends to do acts of wrong and injury to the rights and property of complainants, their agents, servants, and employees, acquired under orders of this court and by contract with the State of Alabama, in this, that the said A. H. Carmichael, solicitor as aforesaid, intends under the color of the said unconstitutional statute to prosecute the said servants, agents, and employees of complainants under said indictments.

The premises considered, the complainants pray that William C. Oates, as governor of the State of Alabama; William C. Fitts, as attorney general of the State of Alabama; A. H. Carmichael, as solicitor for 11th judicial circuit of Alabama, and W. H. Gilliam be made parties defendant to this supplemental bill, and to this end that subpœna and all other needful process be issued to and served upon them, requiring them and each of them, but not under oath, to answer the allegations and averments of the foregoing supplemental bill of complaint from paragraph one to paragraph 5, both inclusive, as by the note hereunder written they are required to answer.

55 And complainants pray that the said act of the legislature of the State of Alabama approved February 9th, 1895, be declared contrary and repugnant to the Constitution of the United States and invalid, inoperative, null, and void, and that an injunction be granted prohibiting and restraining William C. Oates, as governor of the State of Alabama; William C. Fitts, as attorney

general of the State of Alabama; W. H. Gilliam and A. H. Carmichael, solicitor as aforesaid, and all other persons whomsoever from instituting any proceeding against these complainants or either of them, their servants or agents, under the forfeiture clause set out in said second section of said act of the General Assembly of Alabama, and they further pray that said William C. Oates, as governor of the State of Alabama; William C. Fitts, as the attorney general of the State of Alabama; William H. Gilliam, and A. H. Carmichael, solicitor as aforesaid, and all persons whomsoever be restrained and enjoined from instituting or procuring the institution of any proceeding against these complainants or either of them, their agents, servants, or employees, by a mandamus or otherwise, to compel the observance and obedience to said act in reference to the rate of tolls fixed thereby over said bridge, and also from instituting or procuring to be instituted any proceeding against these complainants or either of them for the forfeiture of the franchise of the Memphis & Charleston Railroad Company in and to said bridge on account of the refusal to charge the rates of toll over it fixed by the said act.

And they further pray that each of the said defendants and said Carmichael, solicitor as aforesaid, and all persons whomsoever, be restrained and enjoined from prosecuting said indictments against the said servants, agents, and employees of the complainant-, or from interfering in any way, under and by virtue of the color of said unconstitutional act, with the rights, privileges, and franchises and property of the complainants, their servants or agents, with regard to said bridge.

56 HUMES, SHEFFEY & SPEAKE,
Solicitors for Complainants.

NOTE.—Each of the defendants is required to answer without oath all the allegations contained in the said foregoing supplemental bill from paragraph one to paragraph five, both inclusive.

HUMES, SHEFFEY & SPEAKE,
Solicitors for Complainants.

Endorsed: Filed in clerk's office Jan'y 30th, 1896. N. W. Trimble, clerk U. S. cir. court.

Dismissal as to State of Alabama.

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

CHARLES M. McGHEE and HENRY FINK, as Receivers of the Memphis & Charleston Railroad Company, and said Memphis & Charleston Railroad Co., Complainants,
vs.
THE STATE OF ALABAMA, WILLIAM C. OATES, as Governor of the State of Alabama; William C. Fitts, as Attorney General of the State of Alabama, Defendants.
} No. 213. Equity.

Comes the complainants in the above-entitled cause and hereby dismiss*ed* this suit so far as the State of Alabama is made a party defendant thereto, and hereby amend their bill of complaint in this cause by striking out the name of the State of Alabama as one of the defendants. Done at the hearing of the cause before the Hon. John Bruce, at Montgomery, Alabama, on January 29th, 1896, and to strike out from the prayer of the original bill of complaint the following portion thereof, to wit, "in behalf of the State."

HUMES, SHEFFEY & SPEAKE,
Solicitors for Complainants.

Endorsed: Filed in clerk's office Jan'y 30th, 1896. N. W. Trimble, clerk U. S. cir. court.

57 *Leave to Amend Bill.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

CHARLES M. McGHEE and HENRY FINK, as Receivers of Memphis and Charleston Railroad Company, and said Memphis & Charleston Railroad Compa*m*-, Complainants,
vs.
WILLIAM C. OATES, as Governor of the State of Alabama; William C. Fitts, as Attorney General of the State of Alabama, Defendants.
} No. 213. Equity.

Come the complainants in said cause and move the court for leave to amend their bill of complaint, so far as the State of Alabama is made a defendant thereto, by striking out the name of said "State of Alabama" wherever it may occur in said bill as one of the defendants, and also by striking out the words "in behalf of the State."

And said motion, having been duly considered by the court, is hereby granted, and complainants are allowed to amend said original bill accordingly. Done at Montgomery, Alabama, this 30th day of Jan'y, 1896.

JOHN BRUCE, *Judge.*

Endorsed: Filed in the clerk's office Jan'y 30th, 1896. N. W. Trimble, clerk U. S. cir. court.

Decree Overruling Motion to Dismiss and Allowing Amended Bill to be Filed.

C. M. McGHEE and HENRY FINK, as Receivers of Memphis & Charleston Railroad Company, Complainants,
vs.
WILLIAM C. OATES, as Governor of the State of Alabama; William C. Fitts, as Attorney General *General* of the State of Alabama, Defendants. } No. 213. Equity.

This cause coming on to be heard before me, at chambers, in the city of Montgomery, Alabama, having been regularly continued to this time and place, was argued by counsel and submitted on the motion of the defendants W. C. Oates, as governor of the State of Alabama, and W. C. Fitts, as attorney general of the State
58 of Alabama, to dismiss the bill on the ground that this is a suit against the State of Alabama and violation of the eleventh amendment to the Constitution of the United States, and also upon the motion and petition of the complainant- for leave to file an amended and supplemental bill in said cause against A. H. Carmichael, as solicitor for the eleventh judicial circuit of Alabama.

Upon consideration of said motions, the court is of the opinion that said motion of said William C. Oates, as governor of the State of Alabama, and William C. Fitts, as attorney general, is not well taken, and it is therefore ordered, adjudged, and decreed that said motion be, and the same is hereby, overruled and denied.

It is further ordered, adjudged, and decreed that said motion and petition of complainant for leave to amend said bill by making said solicitor, A. H. Carmichael, a party defendant to said bill and enjoining him from instituting or prosecuting any proceedings of a criminal nature under said alleged unconstitutional act of the General Assembly of Alabama be, and the same is hereby, granted, and plaintiff may file said amendment accordingly.

Done at Montgomery, Alabama, this 30th day of January, 1896.

JOHN BRUCE, *Judge.*

Endorsed: Filed in clerk's office Jan'y 30th, 1896. N. W. Trimble, clerk U. S. cir. court.

Decree Making A. H. Carmichael Party to Suit.

CHARLES M. McGHEE and HENRY FINK, as Receivers of the Memphis & Charleston Railroad Company, and said Memphis & Charleston Railroad Co., Complainants,
vs.
WILLIAM C. OATES, as Governor of the State of Alabama; William C. Fitts, as Attorney General of the State of Alabama, *et als.*, Defendants.
} No. 213. Equity.

Upon reading the amendment to the original bill this day filed herein, making A. H. Carmichael, as solicitor for the 11th judicial circuit of Alabama, a party defendant hereto—

59 It is ordered, adjudged, and decreed that said A. H. Carmichael, as said solicitor, be, and he is hereby, enjoined and restrained temporarily and until the further orders of this court from instituting or prosecuting as such solicitor any indictments or criminal proceedings against any one for a violation of the alleged unconstitutional act of the legislature of Alabama described in the bill.

Done at Montgomery, Alabama, this 5th day of January, 1896.

JOHN BRUCE, *Judge.*

Endorsed: Filed in clerk's office January 30, 1896. N. W. Trimble, clerk.

Petition — Thomas Clem for Writ of Habeas Corpus.

To the Honorable John Bruce, one of the judges of the circuit court of the United States in and for the northern division of the northern district of Alabama:

Your petitioner, Thomas Clem, respectfully represents that he is in the employ of and acting as the agent and servant of Charles M. McGhee and Henry Fink, as receivers appointed under the orders of this court as such of the Memphis & Charleston Railroad Company, and petitioner, as such employee, servant, and agent of said receivers, is engaged in the duty of receiving and collecting tolls for said receivers of and from persons crossing the bridge belonging to said Memphis and Charleston Railroad Company and now in the custody of said receivers, known as the Florence bridge, across the Tennessee river at Florence, Alabama, said tolls being charged and received from persons crossing the public thorou*hg*fares of said bridge. Petitioner further alleges and shows that in making the charges for tolls to all persons crossing said bridge he has charged only the rates prescribed by the receivers under the orders and directions of this court for such tolls, and said tolls so charged and collected are not in excess of those authorized by law.

60 Petitioner further alleges and shows that at the last session of the General Assembly of Alabama an act was passed in reference to the tolls to be charged on said bridge, which said act is in the words and figures following, to wit:

An act "To fix the maximum of tolls to be charged by the owners, lessees or operators, of the road bridge crossing the Tennessee river between the counties of Colbert and Lauderdale and known as the Florence bridge, and to fix the penalty for demanding or receiving a higher rate of toll.

SEC. 1. Be it enacted by the General Assembly of Alabama, That the maximum rate of tolls to be charged by the owners, lessees or operators of the bridge crossing the Tennessee river, between the counties of Colbert and Lauderdale, and known as the Florence bridge, shall be as follows: For each foot passenger, five cents; for children under 14 years and all pupils attending school, 2 cents; for each one-horse vehicle and driver 15 cents; for each two-horse vehicle and driver 25 cents; for each three-horse vehicle and driver 30 cents; for each four-horse vehicle and driver 35 cents; for each additional person in vehicle 5 cents; for each horse, mule or animal of like kind, with rider, 8 cents; for each horse mule or animal of like kind 5 cents; for each cow, steer, or animal of like kind 5 cents; for each sheep, hog, goat or animal of like kind, 3 cents.

SEC. 2. Be it further enacted, That should the owners, lessees or operators of said toll-bridge, by themselves or any of their agents, demand or receive from any person a higher rate of toll than is prescribed by this act, he or they shall forfeit to such person twenty dollars for each offence, to be recoverable before any justice of the peace or notary public and *ex officio* justice of the peace of either of said counties of Colbert or Lauderdale.

Approved, February 9th, 1895."

61 Petitioner further alleges and shows that the said act is in violation of the Constitution of the United States in this, that it fixes a maximum rate of tolls which is less than that which is authorized to be charged by the owner of said bridge by the act incorporating the bridge and granting to the owners thereof its franchises, privileges, and control. Said act is further unconstitutional because the rate of tolls which it fixes as the maximum rate to be charged for the privilege of crossing said bridge is greatly less than what would be a reasonable compensation for the use of the said bridge by the public in using it as a crossing and highway, and the rate of tolls so fixed by the General Assembly of Alabama, taking into consideration the gross receipts from tolls of said bridge and the cost of the bridge and of keeping it in repair, is a virtual confiscation of the property in said bridge property belonging to the owners thereof, and is in violation of the constitutional rights of said owners, their agents, servants and employés.

Petitioner further alleges and shows that, notwithstanding he was acting in pursuance of the orders and directions of this court and its said receivers in receiving and collecting said tolls, and in the

exercise of the constitutional rights of himself and the owners of said bridge in the charge thereof, he has been indicted by the grand jury of the circuit court of Lauderdale county, Alabama, under the provisions of section 4151 of the Criminal Code of Alabama, for having charged persons crossing said bridge a rate of tolls in excess of that fixed by said unconstitutional act of the General Assembly of Alabama. The tolls so charged, petitioner alleges, were not in excess of those authorized by the charter granted to the owner of said bridge, and were not in excess of the tolls which the owner had the right, under the Constitution of the United States, to charge.

The number of indictments thus found against petitioner are ——.

Petitioner further alleges and shows that in pursuance of said indictments writs of arrest have been issued and placed in the
62 hands of —— ——, sheriff of Montgomery county, and that said sheriff, in pursuance of said writs, has arrested petitioner and now has him in custody under said indictments. Petitioner alleges that he is thus restrained of his liberty in violation of the Constitution of the United States, and of his rights and privileges thereunder as a citizen of the United States. He further alleges that he is thus imprisoned and detained of his liberty in violation of the orders and decrees of this court in appointing said receivers and directing them to operate said railroad property, including said bridge.

And petitioner further alleges and shows that said proceeding, by which he was indicted and is now under arrest and detained of his liberty, is in contempt of the orders and proceedings of this court in said cause now pending herein, in which said receivers were appointed, and is also in violation and contempt of the or*e*drs of this court in another suit in equity now pending in this court, wherein said receivers are complainants and William C. Oates, as governor of the State of Alabama, and William C. Fitts, as attorney general of the State of Alabama, and others are defendants, and wherein an injunction was issued and is now in force enjoining said governor and attorney general and all persons whomsoever from instituting any suits or proceedings under said act of the General Assembly of Alabama hereinbefore set out and under the forfeiture clause thereof. The premises considered, petitioner prays that the writ of *habeas corpus* issue to said sheriff, the said —— ——, commanding him to procure the body of your petitioner before your honor at such time and place as you may appoint, together with his reasons for the detention, and that upon the hearing of the petition petitioner be released and discharged from custody.

Before me, J. W. Dimmick, a clerk of the U. S. cir. court in and for the middle district of Alabama, this day personally appeared
Thomas Clem, who is known to me, and who, being duly
63 sworn, says that he has read the foregoing petition and knows the contents thereof, and that the same are true.

THOMAS CLEM.

Sworn and subscribed to before me this 30 day of Jan., 1896.

J. W. DIMMICK,
Clerk U. S. Cir. Court, Nor. Dist. Ala.

Endorsed: Filed in clerk's office Jan. 30th, 1896. N. W. Trimble, clerk.

Writ of Habeas Corpus and Bond of Thomas Clem.

To W. R. Waller, sheriff of Montgomery, Alabama:

Whereas Thomas Clem has presented to me his petition for *habeas corpus*, duly verified by affidavit, alleging that he is illegally held and detained by you under a writ of arrest issued upon an indictment found against him by the grand jury of Lauderdale county, Ala., charging him with taking and receiving illegal, excessive, and unreasonable tolls, and with violating sec. 4151 of the Criminal Code of Alabama, these are therefore to command you that you have the body of the said Thomas Clem before me forthwith at the United States court-room, in the city of Montgomery, Alabama.

Done this 29th day of Jan., A. D. 1896.

JOHN BRUCE,
Judge of the Circuit Court of the United States Circuit and District Courts for the Northern and Middle Districts of the State of Alabama.

STATE OF ALABAMA, }
Montgomery County. }

I hereby acknowledge myself indebted to the United States of America in the sum of one hundred and fifty dollars; this obligation to be void, however, if I shall appear before the United States circuit court for the northern division of the northern district of Alabama, at Huntsville, on the first day of the next term
64 thereof and from day to day and term to term thereafter until discharged, and shall so perform and abide the orders of said court.

Dated at Montgomery, Alabama, January 30th, 1896.

THOMAS CLEM.

Endorsed: Filed in clerk's office January 30th, 1896. N. W. Trimble, clerk.

Petition for Writ of Habeas Corpus — G. W. Brabson.

To the Honorable John Bruce, one of the judges of the circuit court of the United States in and for the northern division of the northern district of Alabama:

Your petitioner, George W. Brabson, respectfully represents that he is the employee, agent, and servant of Charles M. McGhee and Henry Fink, as receivers appointed under the orders of this court, as such, of the Memphis & Charleston Railroad Company, and as such employee, agent, and servant of said receivers petitioner is engaged in the duty of receiving and collecting tolls for said receivers of and from persons crossing the bridge belonging to the said Memphis & Charleston Railroad Company and now in the custody of said

receivers known as the Florence bridge, across the Tennessee river at Florence, Alabama.

Petitioner further alleges and shows that in making the charges for tolls to all persons crossing said bridge he has charged only the rate prescribed by said receivers under the orders and directions of this court for such tolls, and said tolls so charged are not in excess of those allowed and authorized by law.

Petitioner further alleges and shows that at the last session of the General Assembly of Alabama an act was passed in reference to the tolls to be charged on said bridge; which act is in words and figures following, to wit:

"An act to fix the maximum of tolls to be charged by the
65 owners, lessees, or operators of the road bridge crossing the Tennessee river between the counties of Colbert and Lauderdale and known as the Florence bridge, and to fix the penalty for demanding or receiving a higher rate of toll.

SEC. 1. Be it enacted by the General Assembly of Alabama, That the maximum rate of toll to be charged by the owners, lessees, or operators of the bridge crossing the Tennessee river at Florence, between the counties of Colbert and Lauderdale and known as the Florence bridge shall be as follows: For each foot passenger, 5 cents. For children under 14 years of age, and all pupils attending school, 2 cents. For each one-horse vehicle and driver 15 cents; for each two-horse vehicle and driver 25 cents, for each three-horse vehicle and driver 30 cents for each four-horse vehicle and driver 35 cents, for each additional person in vehicle 5 cents, for each horse, mule, or animal of like kind, with rider 8 cents, for each horse, mule or animal of like kind 5 cents, for each cow, steer, or animal of like kind, 5 cents, for each sheep, hog, goat, or animal of like kind, 3 cents.

SEC. 2. Be it further enacted That should the owners, lessees, or operators of the said toll-bridge, by themselves or any of their agents demand or receive from any person a higher rate of toll than is prescribed by this act, he or they shall forfeit to such persons twenty dollars for each offence to be recoverable before any justice of the peace or notary public and *ex officio* justice of the peace of either of said counties of Colbert and Lauderdale.

Approved February 9th, 1895."

Petitioner further alleges and shows that said act is in violation of the Constitution of the United States, in this, that it fixes a maximum rate of tolls which is less than that which is authorized to be charged by the owner of said bridge by the act incorporating the bridge and granting to its owner its franchises, privileges, and control.

66 Said act is further unconstitutional because the rate of tolls which it fixes as the maximum rate to be charged for the privilege of crossing said bridge is greatly less than what would be a reasonable compensation for the use of said bridge by the public in using it as a crossing and highway, and the rate of tolls so fixed by the

General Assembly, taking into consideration the gross receipts from tolls of said bridge and the cost of the bridge and the keeping of it in repair, is a virtual confiscation of the property and property rights in said bridge belonging to the owners thereof, and is in violation of the constitutional rights of said owners, their agents, servants, and employés.

Petitioner further alleges and shows that, notwithstanding he was acting in pursuance of the orders and directions of this court and its said receivers in receiving and collecting said tolls and in the exercise of the constitutional rights of himself and the owners of said bridge in the charge thereof, he has been indicted by the grand jury of the circuit court of Lauderdale county, Alabama, under the provisions of sec. 4151 of the Criminal Code of Alabama, for having charged persons crossing said bridge a rate of tolls in excess of that fixed by said unconstitutional act of the General Assembly of Alabama and unreasonable rates of toll. The tolls so charged (petitioner alleges) were not unreasonable nor in excess of those authorized by the charter granted to the owner of said bridge, and were not in excess of the tolls which the owner had the right under the Constitution of the United States to charge. The number of the indictments thus found against petitioner is —.

Petitioner further alleges and shows that in pursuance of said indictments writs of arrest have been issued and placed in the hands of the sheriff of Montgomery county, and that said sheriff has in pursuance of said writs arrested petitioner and now has him in custody under said indictments. Petitioner alleges that he
67 is thus restrained of his liberty in violation of the Constitution of the United States and of his rights and privileges thereunder as a citizen of the United States. He further alleges that he is thus imprisoned and detained of his liberty in violation of the orders and decrees of this court in appointing said receivers and directing them to operate said railroad property, including said bridge.

And petitioner further alleges and shows that said proceeding by which he was indicted and is now under arrest and detained of his liberty is in contempt of the orders and proceedings of this court in the cause now pending herein, in which said receivers were appointed, and is in violation and contempt of the orders of this court in another suit in equity now pending in this court wherein said receivers are complainants and William C. Oates, as governor of the State of Alabama, and William C. Fitts, as attorney general of the State of Alabama, and others are defendants, and wherein an injunction was issued and is now in force enjoining said governor and attorney general and all persons whomsoever from instituting any suits or proceedings under said act of the General Assembly of Alabama hereinbefore set out and under the forfeiture clause thereof.

The premises considered, petitioner prays that the writ of *habeas corpus* issue to said sheriff, the said W. R. Waller, commanding him to produce the body of your petitioner before your honor at such time and place as you may appoint, together with his reasons for

detention, and that upon the hearing of the petition petitioner be released and discharged from custody.

Before me, —— ——, a — in and for the county of ——, State of Alabama, this day personally appeared —— ——, who is known to me, and who, being duly sworn, says that he has read the foregoing petition and knows the contents thereof, and that the same are true.

G. W. BRABSON.

Subscribed and sworn to before me this 30th day of Jan., 1896.

J. W. DIMMICK, *Clerk.*

68 Endorsed: Filed in clerk's office Jan. 30th, 1896. N. W. Trimble, clerk.

Writ of Habeas Corpus for G. W. Brabson.

To W. R. Waller, sheriff of Montgomery county, Alabama:

Whereas Geo. W. Brabson has presented to me his petition under oath for *habeas corpus*, alleging that he is held and detained by you illegally and in violation of the Constitution of the United States, under a writ of arrest issued and served upon him, upon an indictment found and returned against him by the grand jury of Lauderdale county, Alabama—

These, therefore, are to command you that you have the body of the said George W. Brabson before me instanter, at the United States court-room in the city of Montgomery, Alabama.

Done in the city of Montgomery, Alabama, this 29th day of January, 1896.

JOHN BRUCE,
Judge of the United States Circuit and District Courts for the Northern and Middle Districts of Alabama.

Bond of George W. Brabson.

STATE OF ALABAMA, }
Montgomery County. }

I hereby acknowledge myself indebted to the United States of America in the sum of one hundred and fifty dollars; this obligation to be void, however, if I shall appear before the United States circuit court for the northern division of the northern district of Alabama, at Huntsville, on the first day of the next term thereof and from day to day and term to term thereafter until discharged, and shall do and perform the orders of said court.

Done at Montgomery, Alabama, January 30th, 1896.

G. W. BRABSON.

Endorsed: Filed in clerk's office January 30th, 1896. N. W. Trimble, clerk.

Decree on Petitions of Thomas Clem and G. W. Brabson.

Ex Parte THOMAS CLEM and GEO. W. BRABSON: Application for *Habeas Corpus.*

69 Said Thomas Clem and George W. Brabson having this day been brought before me by W. R. Waller, sheriff of Montgomery county, Ala., on writs of *habeas corpus*, and said sheriff having made his return upon said writs, showing the cause and manner of their detention in his custody, it is considered and ordered by the court that the hearing of said application be, and the same is hereby, continued until the first day of the next April term of said court at Huntsville, Alabama.

It is further ordered that said Thomas Clem and George W. Brabson be, and they are hereby, released upon their own recognizance in the sum of one hundred and fifty dollars each, conditioned upon their appearance on said day and from day to day thereafter until discharged, and upon their doing and performing the orders of the court in this matter.

Done at Montgomery, Alabama, January 30th, 1896.

JOHN BRUCE, *Judge.*

Endorsed: Filed in clerk's office Jan'y 30th, 1896. N. W. Trimble, clerk.

Answer of W. H. Gilliam.

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

CHARLES M. MCGHEE and HENRY FINK, as Receivers of the Memphis & Charleston Railroad Company, and said Memphis & Charleston Railroad Co., Complainants, *vs.* THE STATE OF ALABAMA, WILLIAM C. OATES, as Governor of the State of Alabama; Wm. C. Fitts, as Attorney General of the State of Alabama, and W. H. Gilham, Defendants.	No. 213. Equity.

Comes the defendant W. H. Gilliam and for answer to — said original and amended bill as he is advised is necessary for him to answer *and* says:

1st. Respondent denies all the allegations and charges set forth in said bill of complaint which are not hereinafter expressly admitted.

He admits that Charles M. McGhee and Henry Fink are the
70 receivers of the Memphis & Charleston Railroad Company and were on the 9th day of February, 1895, and that they were authorized and empowered to operate the Memphis and Charleston railroad under an order of the Federal court. He ad-

mits that William C. Oates is governor and William C. Fitts is attorney general of the State of Alabama.

2nd. Respondent further admits that complainants The Memphis & Charleston Railroad Company operates the bridge across the Tennessee river between the counties of Colbert and Lauderdale, over which its line of road extends, and known as the Florence bridge.

3rd. Respondent admits that on the 9th day of February, 1895, an act of the General Assembly of Alabama was approved by the governor which was entitled "An act to fix the minimum of toll to be charged by the owners, lessees, and operators of the road bridge crossing the Tennessee river between the counties of Colbert and Lauderdale, and known as the Florence bridge, and to fix the penalty for demanding or receiving a higher rate of toll."

4th. Respondent admits that the provisions of said act of the General Assembly of Alabama *is* substantially set out in said bill.

5th. For answer to the 4th paragraph of said bill, respondent says that he is not advised how the Memphis and Charleston Railroad Company acquired its right to construct and own said bridge, and demands strict proof of the allegations contained in said 4th paragraph of said bill.

6th. Respondent does not know whether the allegations contained in the 5th, 6th, 7th, and 8th paragraphs of said bill are true or not, and he demands strict proof of the same.

7th. Respondent, for answer to paragraph 9 of said bill, admits that the rate of toll for crossing said bridge, which was fixed by an act of the General Assembly of Alabama approved February 9th, 1895, is much lower than the rate of charges made by the
71 complainants for crossing the bridge, but he does not know whether it is true, as alleged in said paragraph, that the rate of toll fixed by said act approved Feb. 9th, 1895, is much lower than the rate charged for crossing the ferry which was made at the time of the incorporation of the Florence Bridge Company, and he insists that, so far as the question involved in this case is concerned, it makes no difference whether they are smaller or greater than the rate of charges made by the Florence Bridge Company. Respondent denies that the act incorporating the Florence Bridge Company is a contract between the State and the owners of the bridge, the Memphis & Charleston Railroad Company, and he denies that the rate of toll fixed by an act of the General Assembly of Alabama approved February 9th, 1895, is a violation of the constitutional rights of the Memphis & Charleston Railroad Company or said receivers as its representatives, and he denies that said act is unconstitutional, inoperative, null, and void.

8th. For answer to the 10th paragraph of said bill, respondent says that he does not know whether the statements therein contained giving the gross earnings from tolls collected from the toll-bridge for the twelve months ending Dec. 31st, 1894, is correct or not; neither does he know whether the statements therein stated showing the expense of keeping up the bridge is correct, and he demands strict proof of the same. Respondent admits that under the

said act approved Feb'y 9th, 1895, the toll for foot passengers is five cents, and he insists that the toll charged has nothing to do with the question herein involved.

9th. Respondent denies the allegations contained in the 11th and 12th paragraphs of said bill.

10th. Respondent admits that the second section of said act approved February 9th, 1895, provides that should the owners, lessees, or operators of said toll-bridge, by themselves or any of their agents,

demand or receive from any person higher rate of toll than
72 is prescribed by said act, — shall forfeit to such person twenty
dollars for each offence, to be recovered before any justice of

the peace or *ex officio* justice of the peace of either of said counties of Colbert or Lauderdale, but he denies that said clause was inserted in said act for the purpose of deterring the complainant- of questioning by legal proceedings the constitutionality of said act or legal authority of the legislature in its enactment.

11th. For answer to the 14th paragraph of said bill, respondent says that it is not true that complainants are remediless, except by bill in equity, to have the said act of the said General Assembly to be declared unconstitutional, inoperative, null, and void, and to establish and have fixed and determined the rights of the owners of said bridge under said charter of the Florence Bridge Company.

Respondent, further answering said original and amended bill, says that the act of the legislature approved February 9th, 1895, fixed the tolls to be charged on said bridge, and that said act of the legislature is constitutional, that the Tennessee river is a navigable stream flowing through the State of Alabama, and that said State has the right to regulate and control the charges for crossing said bridge, and he insists that said act of the legislature is constitutional and binding upon the citizens of said State, as well as upon the Memphis & Charleston Railroad Company and the receivers in charge of and operating said bridge.

Respondent further states that after the approval of said act, on, to wit, the — day of ——, 1895, he had occasion to go from Colbert county to the town of Florence, in Lauderdale county, crossing said bridge on foot, and that in accordance with the provisions of said act regulating toll charges on said bridge he tendered to the toll-keeper the sum of five cents, which was the amount required by said act to be paid for crossing said bridge on foot; that the agents

of the complainants in this cause then in charge of said bridge
73 declined and refused to accept said sum of five cents, and in
order to pass over the river he was forced and compelled to

pay the sum of ten cents, which is double the amount they were authorized to charge him under the provisions of said act, and respondent insists that he had a right to institute his suit against the said receivers and the Memphis and Charleston Railroad Company to recover the penalty provided for by the second section of the said act of the General Assembly of Alabama approved Feb. 9th, 1895.

12th. For answer to the 17th paragraph of said bill, respondent says he has no personal knowledge of the matters and things alleged; that he has made no effort whatever to institute any crim-

inal prosecution against the said complainants. He has been ad vised, however, that a number of indictments had been found agains them, but as to this matter he has no personal knowledge, and h does not know whether the allegations contained in said 17th para graph of said bill of complaint are true or not.

Respondant, having now fully answered all the allegations an charges in said bill of complaint which he is advised is right an proper for him to answer, prays that your honor upon the hearin of this cause will dis-olve the injunction restraining him from pros ecuting his said suit against the said Memphis and Charleston Rail road Co. and its receivers for the violation of the second section o the said act of the General Assembly of Alabama approved Febru ary 9th, 1895, and that he be hence dismissed with his reasonabl cost in this behalf expended.

ISAAC ORME,
Sol. for Respondant.

Endorsed: Filed in clerk's office March 31, 1896. N. W. Trimble clerk.

74 *Agreement of Att'ys as to Exhibits to be Used in Evidence.*

In the Circuit Court of the United States for the Northern Divisio of the Northern District of Alabama.

CHARLES M. McGHEE and HENRY FINK, as Receivers of the Memphis & Charleston Railroad Company, and said Memphis & Charleston Railroad Co., Complainants, *vs.* THE STATE OF ALABAMA, WILLIAM C. OATES, as Governor of the State of Alabama; Wm. C. Fitts, as Attorney General of the State of Alabama, and *E.* H. Gilliam, Defendants.	No. 213. Equity

In the above-entitled cause it is hereby agreed that either part may examine witnesses orally on the 13th day of April, 1896, a Huntsville, before Ed. Greenleaf, special examiner of said court, wh shall, under the rules of said court, reduce or cause to be reduced t writing the evidence of said witnesses.

Dated this 6th day of April, 1896.

ISAAC ORME,
Attorney for W. H. Gilliam.

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

CHARLES M. McGHEE and HENRY FINK, as Receivers of the Memphis & Charleston Railroad Company, and said Memphis & Charleston Railroad Co., Complainants,
vs.
THE STATE OF ALABAMA, WILLIAM C. OATES, as Governor of the State of Alabama; Wm. C. Fitts, as Attorney General of the State of Alabama, and *E.* H. Gilliam, Defendants.
} No. 213. Equity.

In the above-entitled cause it is hereby agreed that Exhibit "A A A" to the original bill in this cause is a correct copy of the act of Alabama approved January 12th, 1832, incorporating the Florence Bridge Company, and that Exhibit "B B B" is a correct copy of the act of the legislature of Tennessee passed February 2nd, 1846, incorporating the Memphis & Charleston Railroad Company, and that Exhibit "C C C" is a correct copy of the act of the General Assembly of Alabama approved the 7th day of January, 1850, incorporating the Memphis & Charleston Railroad
75 Company.

It is further agreed that said exhibits shall be taken and considered and used in evidence in this cause in lieu and instead of the original acts.

HUMES, SHEFFEY & SPEAKE,
Att'ys for Complainants.
ISAAC ORME, *Att'y for Wm. H. Gilliam.*

Endorsed: Filed in clerk's office April 6th, 1896. N. W. Trimble, clerk.

Decree pro Confesso.

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

CHARLES M. McGHEE and HENRY FINK, as Receivers of the Memphis and Charleston Railroad Company, and said Memphis & Charleston Railroad Company, Complainants,
vs.
THE STATE OF ALABAMA, WM. C. OATES, as Governor of the State of Alabama; Wm. C. Fitts, as Attorney General of the State *fo* Alabama; A. H. Carmichael, Solicitor for the 11th Judicial Circuit of the — Alabama, and W. H. Gilliam, Defendants.
} No. 213. Equity.

In the above-entitled cause, it appearing to the court that Wm. C. Oates, as governor of the State of Alabama, and William C. Fitts, as attorney general of the State of Alabama, were served with a sub-

pœna in said cause on the 16th day of January, 1895, by W. H. Tisdale, United States marshal; and it further appearing that the motion of Wm. C. Oates, as governor of the State of Alabama, and others, to dismiss the bill in this cause was, on the 30th day of January, 1896, overruled and disallowed by the court; and it further appearing to the court that on the 30th day of January, 1896, motion and petition of the complainants was heard for leave to file an amended and supplemental bill in said cause against
76 A. H. Carmichael, as solicitor as aforesaid, and the other defendants; and it further appearing to the court that said Carmichael personally appeared at the time and place of hearing said motion and resisted the allowance of the filing of the bill; and it further appearing to the court that said motion to file said amended and supplemental bill was, on the 30th day of January, 1896, granted; and it further appearing to the court that on said 30th day of January, 1896, said supplemental bill was filed in said cause; and it further appearing that all of said above-named defendants have failed to appear and plead, answer, or demur to said original and amended and supplemental bills—

It is therefore ordered, adjudged, and decreed that said original, amended, and supplemental bills be, and are hereby, taken as in all things confessed by each of said defendants, to wit, Wm. C. Oates, as governor of the State of Alabama; Wm. C. Fitts, as attorney general of the State of Alabama, and A. H. Carmichael, as solicitor of the 11th judicial circuit of the State of Alabama.

Done this 9th day of April, A. D. 1896.

JOHN BRUCE, *Judge, etc.*

Endorsed: Filed in open court April 9th, 1896. N. W. Trimble, clerk

Order Setting Aside Decree pro Confesso.

CHARLES M. McGHEE and HENRY FINK, as Receivers of the Memphis & Charleston Railroad Company, and said Memphis & Charleston Railroad Co., Complainants, *vs.* THE STATE OF ALABAMA, WILLIAM C. OATES, as Governor of the State of Alabama; Wm. C. Fitts, as Attorney General of the State of Alabama, and *E.* H. Gilliam, Defendants.	No. 213. Equity

In this cause this day comes the defendants William C. Oates, as governor of the State of Alabama, and William C. Fitts, as attorney general of the State of Alabama, and move the court to set
77 aside the decree *pro confesso*, heretofore rendered against them in this cause, and upon consideration of said motion it is ordered that said decree *pro confesso* be set aside upon consideration that the said defendants file an answer to the bill of complaint in the cause within twenty days from the entry of this order, and upon the further condition *of* that the testimony already taken and heard

as having been properly and legally taken *and* to be used as evidence in the cause upon its final hearing the same as if properly and legally taken after the said answer has been filed.

And it is further ordered that the defendants be allowed three months in which to take and file depositions.

Entered April 25th, 1896.

N. W. TRIMBLE, *Clerk.*

Order Relieving Thomas Clem and G. W. Brabson from Attendance.

CHARLES M. McGHEE and HENRY FINK, as Receivers of the Memphis & Charleston Railroad Company and said Memphis & Charleston Railroad Co., Complainants,
vs.
THE STATE OF ALABAMA, WILLIAM C. OATES, as Governor of the State of Alabama; Wm. C. Fitts, as Attorney General of the State of Alabama, and *E.* H. Gilliam, Defendants. } No. 213. Equity.

In the matter of the petition of Thomas Clem and G. W. Brabson, heretofore filed herein, it is ordered that the said Thomas Clem and G. W. Brabson may be discharged upon their personal recognizance heretofore filed herein until required to do so by the further orders of the court.

Entered April 25th, 1896.

N. W. TRIMBLE, *Clerk.*

78 *Appearance Entered.*

CHARLES M. McGHEE and HENRY FINK, as Receivers of the Memphis & Charleston Railroad Company, and said Memphis & Charleston Railroad Co., Complainants,
vs.
THE STATE OF ALABAMA, WILLIAM C. OATES, as Governor of the State of Alabama; Wm. C. Fitts, as Attorney General of the State of Alabama, and *E.* H. Gilliam, Defendants. } No. 213. Equity.

This day comes Emmet O'Neal and W. J. Wood, Esqrs., and in open court enter their appearance as associate counsel for the defendants herein.

Entered April 25th, 1896.

N. W. TRIMBLE, *Clerk.*

Replication.

In the Circuit Court of the United States for the Northern Divisi
of the Northern District of Alabama.

CHARLES M. McGHEE and HENRY FINK, as Receivers of the Memphis & Charleston Railroad Company, and said Memphis & Charleston Railroad Co., Complainants,
vs.
THE STATE OF ALABAMA, WILLIAM C. OATES, as Governor of the State of Alabama; Wm. C. Fitts, as Attorney General of the State of Alabama, and *E.* H. Gilliam, Defendants.
} No. 213. Equi

The replication of complainants in the above-entitled cause to t
answer of William H. Gilliam.

These repliants, saving and reserving unto themselves now a
at all times hereafter all and all manner of benefits and advanta
of exception which may be had or taken to the manifold insu
ciencies of the said answer, for replication thereunto say that th
will aver, maintain, and prove their said bill of complaint to
true, certain, and sufficient in law to be answered unto, and th
the said answer of the said defendants is untrue, uncertain, and
sufficient to be replied unto by these repliants; without this, th
any other matter or thing whatsoever in the said answer contain
material or effectual in the law to be replied unto and n
79 herein and hereby well and sufficiently replied unto, co
fessed or avoided, traversed or denied, is true; all whi
matters and things these repliants are and will be ready to av
maintain, and prove as this honorable court shall direct, and hu
bly pray as in and by their said bill they have already prayed.

HUMES, SHEFFEY & SPEAKE,
Solicitors for Complainants.

Endorsed: Filed in clerk's office April 29th, 1896. N. W. Tri
ble, clerk.

Petition for Extension of Time to File Answer.

CHARLES M. McGHEE and HENRY FINK, as Receivers of the Memphis & Charleston Railroad Company, and the Memphis & Charleston Railroad Company, Complainants,
vs.
WILLIAM C. OATES, as Governor of the State of Alabama; William C. Fitts, as Attorney General of the State of Alabama; William H. Gilliam, and A. H. Carmichael, as Solicitor 11th Judicial Circuit, Defendants.
} No. 213. Equi

To the honorable judges of said court:

In this cause comes the defendants William C. Oates, as govern
of the State of Alabama, and William C. Fitts, as attorney gene

of the State of Alabama, by their solicitors and counsel, O'Neal & Wood, and move the court to make an order enlarging the time to answer the bill in said cause, and as ground for said motion state and allege as follows:

That at the April term, 1896, of the said circuit court for the northern division of the northern district of Alabama, at Huntsville, an order was made in said cause setting aside the decree *pro confesso* and allowing the said defendants twenty days in which to file answers. A copy of the said decree is hereto attached, marked Exhibit "A," and made a part of this motion.

That Emmet O'Neal and W. J. Wood, composing the firm of O'Neal and Wood, were, on the 25th day of April, 1896, specially retained as counsel by the said defendants; that since that
80 date the official duties of the said Emmet O'Neal, who is the United States district attorney for the northern district of Alabama, and who is the leading coun el in said cause, have so engrossed his time that he has been unable to confer with his associates and to prepare an answer in said cause; that the official duties of William C. Fitts, who is the attorney general of the State of Alabama, and who is also of counsel, have prevented him from giving the necessary time and attention to this cause; that this suit is in effect a suit against the State of Alabama; that its governor and attorney general and State solicitor are defendants, and that said suit involves the constitutionality of certain statutes enacted by the General Assembly of the State of Alabama regulating the rates of toll over the bridge operated by the Memphis & Charleston Railroad Company at Florence, Alabama, and seeks to enjoin the said State of Alabama, by its officers and agents, from enforcing said statutes; that said cause is liable to involve and does involve a conflict of jurisdiction between the Federal and State courts; that the facts alleged in the said bill are matters of record and account kept in the books of the Memphis & Charleston Railroad Company, to which counsel for said defendants have no access nor authority to investigate without an order of the court; that the preparation of an answer in said cause requires considerable time and labor and consultation with the said defendants, who reside out of the said northern district of Alabama, and that this application is not made for delay.

Wherefore the defendants above named pray the court to enlarge the time for filing an answer to the said bill for thirty days' additional time from the entry of this order; and defendants will ever pray, etc.

O'NEAL & WOOD,
Solicitors for Defendants.

Endorsed: Filed in clerk's office May 16th, 1896. N. W. Trimble, clerk.

81 EXHIBIT "A" TO PETITION.

CHARLES M. McGHEE and HENRY FINK, as Receivers of the Memphis & Charleston Railroad Company, and The Memphis & Charleston Railroad Co., Complainant-,
vs.
WILLIAM C. OATES, as Governor of the State of Alabama; William C. Fitts, as *Adjutant* General of the State of Alabama; William H. Gilliam, and A. H. Carmichael, as Solicitor, etc., Defendants.
} No. 213. Equity.

In this cause this day comes the defendants William C. Oates, as governor of the State of Alabama, and William C. Fitts, as attorney general of the State of Alabama, and move the court to set aside the decree *pro confesso* heretofore rendered against them in this cause, and upon consideration of said motion—

It is ordered that said decree *pro confesso* be set aside upon consideration that the said defendants file an answer to the bill of complaint in this cause within twenty days from the entry of this order, and upon the further condition that the testimony already taken in the cause by the complainant shall be taken and held as having been properly and legally taken and to be used as evidence in the cause upon its final hearing the same as if properly and legally taken after the said answer has been filed.

And it is further ordered that the defendants be allowed three months in which to take and file depositions.

Order Granting Extension of Time in which to File Answer.

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

CHARLES M. McGHEE and HENRY FINK, as Receivers of the Memphis & Charleston Railroad Company, and The Memphis & Charleston Railroad Company, Complainants,
vs.
WILLIAM C. OATES, as Governor of the State of Alabama; William C. Fitts, as Attorney General of the State of Alabama; William H. Gilliam, and A. H. Carmichael, as Solicitor, etc., Defendants.
} No. 213. Equity.

82 In the above-entitled cause, upon the application of William C. Oates, as governor of the State of Alabama, and William C. Fitts, as attorney general of the State of Alabama, two of the above-named defendants, and upon such cause as is shown

by their written application, herewith filed, it is ordered by the court that the time heretofore granted by the order or decree of April 25th, 1896, allowing the said defendants twenty days in which to file answers in the said cause, be extended for thirty days from the date of the entry of this order.

DON A. PARDEE,
Circuit Judge.

Endorsed: Filed in clerk's office May 16th, 1896. N. W. Trimble, clerk.

Notice of Filing Demurrers.

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

CHARLES M. McGHEE and HENRY FINK, as Receivers of the Memphis & Charleston Railroad Company, and The Memphis & Charleston Railroad Company, Complainants, *vs.* WILLIAM C. OATES, as Governor of the State of Alabama; William C. Fitts, as Attorney General of the State of Alabama; William H. Gilliam, and A. H. Carmichael, as Solicitor, etc., Defendants.	No. 213. Equity.

To Messrs. Humes, Sheffey and Speake, solicitors for complainant-.

You will please take notice that — the above-entitled cause, now pending in said court, the respondents, by their solicitors, on May 27th, 1896, filed their demurrers to the original and amended bills of complaint as filed in said cause.

[SEAL.] Witness my hand as clerk of said circuit court this 29th day of May, 1896.

N. W. TRIMBLE,
Clerk U. S. Cir. Court.

Endorsed: I, Ed. E. Greenleaf, deputy clerk of the circuit court of the United States, hereby certify that I delivered a copy of the within notice to Paul Speake, Esq., a member of the firm of Humes, Sheffey & Speake, solicitors for complainant-, this May 29th, 83 1896. Ed. E. Greenleaf, deputy clerk, U. S. cir. court.

Endorsed: Filed in clerk's office May 29th, 1896. N. W. Trimble, clerk, etc.

Decree Granting Leave to File Demurrers.

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

CHARLES M. McGHEE and HENRY FINK, as Receivers of the Memphis & Charleston Railroad Company, and The Memphis & Charleston Railroad Company, Complainants,

vs.

WILLIAM C. OATES, as Governor of the State of Alabama; William C. Fitts, as Attorney General of the State of Alabama; William H. Gilliam, and A. H. Carmichael, as Solicitor, etc., Defendants.

No. 213. Equity.

Whereas at the April term, 1896, of the said court the decrees *pro confesso* theretofore rendered against the said Oates and Fitts, as governor and attorney general of the State of Alabama as aforesaid, were set aside upon the condition that the said defendants should answer the bill in said cause within twenty days; and whereas the time for such answer was afterwards enlarged by the Hon. Don A. Pardee, circuit judge, for thirty days or until the 16th day of July, 1896; and whereas it appears that the decree *pro confesso* heretofore rendered against A. H. Carmichael, as solicitor for the 11th judicial circuit, has not been set aside; and whereas upon application of said defendants it appears that they claim they have a valid defense to the said bill by demurrer-, and which demurrers are claimed by the solicitors of the *of the* sais defendants are to the merits of the said cause; and whereas it appears that all of the said defendants have filed said demurrers in said cause, now, therefore, upon the application of the said defendants, leave is hereby granted them to withdraw the said demurrers from the files, they having been irregularly filed, and leave is granted them to refile the said demurrers in said cause.

It is further ordered that the decree *pro confesso* heretofore granted against the said A. H. Carmichael is set aside.

84 It is further ordered that the time for answer as limited in the decree heretofore rendered in said cause is enlarged until the said demurrers so refiled are disposed of under the rules and practice of this court. This is not to affect the legality of the testimony already taken and is not to prejudice plaintiff-.

Done at chambers this 10th day of June, 1896.

JOHN BRUCE, *Judge.*

Endorsed: Filed in clerk's office June 13th, 1896. N. W. Trimble, clerk.

Demurrers.

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

CHARLES M. McGHEE and HENRY FINK, as Receivers of the Memphis & Charleston Railroad Company, and The Memphis & Charleston Railroad Company, Complainants,
vs.
WILLIAM C. OATES, as Governor of the State of Alabama; William C. Fitts, as Attorney General of the State of Alabama; William H. Gilliam, and A. H. Carmichael, as Solicitor, etc., Defendants.
} No. 213. Equity.

The joint demurrer of William C. Oates, as governor of the State of Alabama, and William C. Fitts, as attorney general of the State of Alabama, and A. H. Carmichael, as solicitor for the 11th judicial circuit of the State of Alabama, three of the above-named defendants, to the bill of complaint of Charles M. McGhee and Henry Fink, as receivers of the Memphis & Charleston Railroad Company, and The Memphis & Charleston Railroad Company, the above-named plaintiffs.

These defendants respectively, by protestation, not confessing or acknowledging all or any of the matters and things in the said plaintiffs' bill to be true in such matter and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer showeth that:

I. This suit is in fact and effect a suit against the State of Alabama and is prohibited by the eleventh amendment to the Constitution of the United States.

85 II. This court has no jurisdiction to try this cause, because neither the complainants or defendants are residents of the district in which the suit is brought.

III. That Charles M. McGhee and Henry Fink are citizens of other States and reside out of the State of Alabama; the Memphis & Charleston Railroad Company is a resident of the State of Tennessee, and William C. Oates, the governor of the State of Alabama, and William C. Fitts, the attorney general of the State of Alabama, both reside, as the constitution of the State of Alabama provides that they shall, in the city of Montgomery, which is in the middle district of Alabama.

IV. That the bill of complaint fails to show any facts or state of facts giving this court jurisdiction to hear and determine this cause.

V. The bill shows on its face that William C. Oates and William C. Fitts, two of these defendants, are not inhabitants of the northern district of Alabama or the northern division of the northern

district of Alabama, but that they are inhabitants of and reside in the city of Montgomery, in the county of Montgomery, in the middle district of Alabama, and that they were the sole defendants at the commencement of the suit, and that Carmichael was made a party by amendment subsequently thereto.

VI. That the said bill fails to show any act of the governor of Alabama and the attorney general of Alabama, or either of them, as to which complainants complain, or any act threatened by said defendants, or either of them, injurious to the complainants.

VII. That the said bill fails to show any equity or right of complainants against the governor of Alabama and the attorney general of the State of Alabama, or either of them, or to allege any threatened injury to complainants by them or either of them.

VIII. That the bill shows on its face that the governor of the State of Alabama and the attorney general of the State of Alabama are in no sense proper parties defendant to said suit.

86 IX. That the bill shows on its face that the Memphis & Charleston Railroad Company after its incorporation acquired by purchase from the Florence Bridge Company (a corporation incorporated by a special act of the General Assembly of the State of Alabama approved January 12th, 1832, for the purpose of constructing and operating a toll-bridge across the Tennessee river at Florence, Alabama) the toll-bridge across said river so built, owned, and operated by said Florence Bridge Company, and after the said purchase that the said Memphis & Charleston Railroad Company operated said bridge under the charter of the said Florence Bridge Company, and the bill shows that the Memphis and Charleston Railroad Company had no power or authority by its charter to purchase or operate the said toll-bridge; that the operation of the said toll-bridge was not necessary to carry out the purposes for which the said Memphis & Charleston railroad was incorporated, and that its purchase and operation of the said toll-bridge was unauthorized, *ultra vires*, null, and void.

X. The bill shows on its face that the incorporation of the Memphis & Charleston Railroad Company by the General Assembly of the State of Tennessee and the General Assembly of the State of Alabama only vested it with power and authority to purchase and hold such bridges as were necessary or required in the operation of the said railroad, and did not authorize and empower the said railroad company to purchase and operate a toll-bridge; that the bill does not show that the purchase and operation of a toll-bridge across the Tennessee river at Florence was necessary to carry out the purposes for which it was created and incorporated, and the purchase and operation of the said toll-bridge was *ultra vires* and void.

XII. That the said pretended purchase by said Memphis & Charleston Railroad Company of said toll-bridge of the said Florence Bridge Company did not authorize the said Memphis & Charleston Railroad Company to operate the said toll-bridge under the

87 charter of the said Florence Bridge Company.

XIII. That the said Memphis & Charleston Railroad Company by its alleged purchase of the toll-bridge of the said Florence

Bridge Company did not acquire the right or power to operate said bridge for any other purpose than the carrying of freight and passengers on its trains across the Tennessee river.

XIV. That the said Memphis & Charleston Railroad Company by its alleged purchase of the toll-bridge of the said Florence Bridge Company did not acquire the rights or franchises of the said bridge company.

XV. The bill shows that the said Memphis & Charleston Railroad Company purchased or attempted to purchase from the said Florence Bridge Company its said toll-bridge across the Tennessee river at Florence, and owned and operated the same under the charter of the said bridge company, and the said Florence Bridge Company is therefore shown to be a necessary party plaintiff to this suit.

XVI. The bill in this case shows that the Florence Bridge Company was a corporation created by the General Assembly of the State of Alabama; that said corporation had authority to construct, maintain, and operate a toll-bridge over and across the Tennessee river at Florence, Alabama, and to charge and collect tolls; that the act of incorporation or charter of said bridge company contained no provision conferring any special or exclusive powers or restricting future legislative action; that it is further shown that said bridge was built and operated under the franchise so conferred by said act of the General Assembly of the State of Alabama; that by section seven of said act of incorporation it was provided that the rates of toll for crossing the said bridge should never exceed the present rates of ferriage at said ferry, which was merely a limitation upon the powers of said corporation or a limitation upon the powers of the county or commissioners' courts of Franklin and Lauderdale counties; that afterwards the Memphis & Charleston Railroad Company was incorporated by charters from the
88 legislatures of the States of Tennessee and Alabama, and by its said charters was authorized to "purchase, have, and hold any bridge over which it was necessary to carry said railroad, and when said purchase was made to hold said bridge on the said terms and with the same rights which belonged to the corporation from which the purchase was made;" that, claiming to act in pursuance of said authority, the said Memphis & Charleston Railroad Company purchased the said toll-bridge of the said Florence Bridge Company and operated the said bridge under the charter of the said Florence Bridge Company, "having a toll-bridge for that purpose, and also a bridge over the toll-bridge for the use of the railroad business;" that afterwards, on the 9th day of February, 1895, the General Assembly of the State of Alabama passed an act regulating the rate of toll on said bridge, and the bill further shows that the suit is brought against the governor and the attorney general of the State of Alabama to test the constitutionality and validity of the said act of the General Assembly of the State of Alabama, regulating the rates of toll on and over the said bridge; and defendants allege that the said facts, so alleged in the said bill, shows that the said Florence Bridge Company's toll-bridge, so acquired by purchase by said railroad company, was property affected with a public use at

the date of said purchase and still is, and that the act of the General Assembly of the State of Alabama incorporating the said Florence Bridge Company conferred upon it no exclusive privilege or franchise and contained no provision or stipulation limiting the power of the State to regulate and control the rates of toll over the said bridge, but all of the allegations of the said bill show that the legislature refrained and still has the power to control, regulate, alter, or reduce the rates of toll over or across the said bridge; and the bill wholly fails to show any legislative interference or impairment of any chartered rights or privileges of the said plaintiff in this suit, or that the act of the General Assembly of the State of Alabama regulating the rates of toll on the said bridge enacted on the
89 9th day of February, 1895, was not a valid and proper exercise of legislative power.

XVII. The bill shows on its face that the legislature of the State of Alabama did have authority and power to reduce the tolls charged by complainants for crossing the said bridge, and the act of the General Assembly of the State of Alabama of February 9th, 1895, was a valid and proper exercise of legislative power and did not violate or impair any of the legal or constitutional rights of the complainant.

XVIII. The bill shows that the complainant's charter was granted to it only for the purpose of enabling it to construct and operate a railroad, and that its right to purchase and hold thoroughfares and bridges was only incidental to its right and power to build and operate a railroad, while the bill proceeds upon the theory that complainant has all the original rights, franchises, and powers of a toll-bridge company, and in setting out the gross and net earnings of the Florence bridge and in alleging that the act of the legislature regulating the tolls thereon is confiscatory and unconstitutional, fails to show and set out the entire earnings of the bridge, earned upon that part used in the business of the railroad, as well as that part used as a toll-bridge.

XIX. The bill is inconsistant in this, that it alleges that the value of the entire bridge is two hundred and fifty thousand dollars and of the thoroughfare one hundred and twenty-five thousand dollars, while it also shows by its exhibits that the value of the entire bridge is only two hundred and thirty thousand dollars and of the thoroughfare part of the bridge only $51,083.33.

XX. The bill fails to show what is the cost of construction of said bridge, and that the rates fixed by the legislature in the act approved February 9th, 1895, are unreasonable and confiscatory or reduce the earnings of said bridge below a reasonable interest on the cost of construction.

90 XXI. The bill seeks to nullify the act of the legislature of a sovereign State by alleging that complainant became entitled to chartered and vested rights protected by the Constitution of the United States by the purchase of such rights, and fails to show how, when, and by what deed or contract, if any, these rights and property were purchased, and how, when, or in what manner alienated by the corporation to whom they were originally granted.

XXII. The bill shows that, if even the Memphis & Charleston Railroad Company acquired by a valid purchase all the rights, powers, and franchises of the Florence Bridge Company, a corporation, it acquired the same subject to the paramount right of the State, by its legislature, at any time to control and regulate the rates of toll thereon.

XXIII. The bill shows on its face that the rates fixed by the legislature in the act approved February 9th, 1895, were just and reasonable, and were not less than rates charged for crossing other bridges whose cost of construction and value are far greater than that of the Florence bridge.

XXIV. The bill shows on its face that the complainants have a plain, complete, and adequate remedy at law.

XXV. The bill shows that the General Assembly of the State of Alabama had the right to regulate the tolls on the said bridge, as shown by the act passed February 9th, 1895.

XXVI. That the bill wholly fails to show any valid or legal purchase by the Memphis & Charleston Railroad Company of the bridge or property of the Florence Bridge Company in this, that it does not set out or show that the Florence Bridge Company, a corporation, had any power or authority under its charter to sell, alienate, or otherwise dispose of its said bridge, property, or franchises.

XXVII. That while the bill and amendments thereto allege that the Memphis & Charleston Railroad Company purchased the bridge of the Florence Bridge Company, it wholly fails to allege or
91 show that the Florence Bridge Company had any power or authority under its charter or any subsequent act of the legislature or the laws of Alabama to sell or alienate said property.

XXVIII. That the bill and amendments thereto do not show that the Memphis & Charleston Railroad Company ever made any valid or legal purchase of the bridge of the Florence Bridge Company, or that it has any title thereto.

Wherefore these defendants respectively demand the judgment of this honorable court whether they shall be compelled to make any other or further answer to the said bill or any of the matters or things therein contained, and pray to be hence dismissed with their reasonable costs in this behalf sustained.

O'NEAL & WOOD, *Of Counsel.*

STATE OF ALABAMA, }
Montgomery County. }

William C. Oates and William C. Fitts make solemn oath and say they are the two original defendants in the said cause, and that the foregoing demurrers are not interposed for delay.

WILLIAM C. OATES.
WILLIAM C. FITTS.

Sworn to and subscribed before me this the 18th day of May, 1896.

[SEAL.] FRANCIS MARION PURIFOY,
Notary Public in and for said County.

STATE OF ALABAMA, }
Colbert County. }

A. H. Carmichael makes solemn oath and says that he is a par defendant to said cause, made so by amendment, and that the for going demurrers are not interposed for delay.

A. H. CARMICHAEL.

Sworn to and subscribed before me this the 24th day of Ma 1896.

W. L. CHITWOOD,
Notary Public.

I hereby certify that in my opinion the foregoing demurrers ar well founded in point of law.

EMMET O'NEAL,
Of Counsel for Def'd'ts.

Endorsed: Filed in clerk's office May 27th, 1896. N. W. Trim ble, clerk.

Endorsed: Withdrawn by annexing the order hereto attached and refiled in accordance with said order this 13th day of June 1896. N. W. Trimble, clerk.

92 *Demurrers Set Down for Hearing.*

CHARLES M. MCGHEE and HENRY FINK, as Receivers of Memphis & Charleston Railroad Company, and the said Memphis & Charleston Railroad Co., Complainants,
vs.
WILLIAM C. OATES, as Governor of the State of Alabama; William C. Fitts, as Attorney General of the State of Alabama; William H. Gilliam, and A. H. Carmichael, as Solicitor, etc., Defendants. } No. 213. Equity.

Now comes complainants in the above-entitled cause, by Humes, Sheffey and Speake, their solicitors, and set down the demurrers of the defendants William C. Oates, as governor of the State of Alabama; William C. Fitts, as attorney general of the State of Alabama, and A. H. Carmichael, as solicitor for the 11th judicial circuit of the State of Alabama, for argument.

HUMES, SHEFFEY & SPEAKE,
Sol'rs for Complain'ts.

Endorsed: Filed in clerk's office Aug. 3, 1896. N. W. Trimble, clerk.

Order for Hearing on Demurrers.

CHARLES M. McGHEE and HENRY FINK, as Receivers of Memphis & Charleston Railroad Company, *et als.*
vs.
WILLIAM C. OATES, as Governor of the State of Alabama, and Others.
} No. 213. Equity.

Come the parties by counsel, and by agreement in open court this cause is set down for hearing on demurrers to the bill of complaint on October 26th, 1896. (In open court, October 15th, 1896.)

Demurrer of William H. Gilliam.

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

CHARLES M. McGHEE and HENRY FINK, as Receivers of the Memphis & Charleston Railroad Company, and The Memphis & Charleston Railroad Company, Complainants,
vs.
WILLIAM C. OATES, as Governor of the State of Alabama; William C. Fitts, as Attorney General of the State of Alabama; William H. Gilliam, and A. H. Carmichael, as Solicitor, etc., Defendants.
} No. 213. Equity.

93 The demurrer of William H. Gilliam, one of the above-named defendants, to the bill of complaint of Charles M. McGhee and Henry Fink, as receivers of the Memphis & Charleston Railroad Company, and The Memphis & Charleston Railroad Company, the above-named plaintiffs.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said plaintiffs' bill to be true in such matter and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer showeth that:

1st. That the bill shows on its face that the Memphis & Charleston Railroad Company after its incorporation acquired by purchase from the Florence Bridge Company (a corporation incorporated by special act of the General Assembly of the State of Alabama approved January 12th, 1832, for the purpose only of constructing and operating a toll-bridge across the Tennessee river at Florence, Ala.) the toll-bridge across said river so built, owned, and operated by said Florence Bridge Company, and after the said purchase that the said Memphis and Charleston Railroad Company operated said bridge under the charter of the said Florence Bridge Company, and the bill shows that the said Memphis & Charleston Railroad Com-

pany had no power or authority by its charter to purchase or operate the said toll-bridge; that the operation of the said toll-bridge was not necessary to carry out the purpose for which the said Memphis & Charleston Railroad Company was incorporated, and that its purchase and operation of the said toll-bridge was unauthorized, *ultra vires*, null, and void.

2nd. The bill shows on its face that the incorporation of the Memphis & Charleston Railroad Company by the General Assembly of the State of Tennessee and the General Assembly of the State of Alabama only vested it with power and authority to purchase and hold such bridges as were necessary or required in the operation of the said railroad, and did not authorize and empower the said railroad company to purchase and operate a toll-bridge; that the bill does not show that the purchase and operation of a toll-bridge across the Tennessee river at Florence was necessary to
94 carry out the purposes for which it was created and incorporated, and the purchase and operation of said toll-bridge was *ultra vires* and void.

3rd. That the said pretended purchase by the said Memphis & Charleston Railroad Company of the said toll-bridge of the Florence Bridge Company did not authorize the said Memphis & Charleston Railroad Company to operate the said toll-bridge under the charter of the said Florence Bridge Company.

4th. That the said Memphis & Charleston Railroad Company by its alleged purchase of the toll-bridge of the said Florence Bridge Company did not acquire the right or power to operate said bridge for any other purpose than the carrying of freight and passengers on its trains across the Tennessee river.

5th. That the said Memphis & Charleston Railroad Company by its alleged purchase of the toll-bridge of the Florence Bridge Company did not acquire the right or franchise of the said bridge company.

6th. The bill shows that the said Memphis & Charleston Railroad Company purchased or attempted to purchase from the said Florence Bridge Company its said toll-bridge across the Tennessee river at Florence and owned and operated the same under the charter of the said bridge company, and the said Florence Bridge Company is therefore shown to be a necessary party plaintiff to this suit.

7th. The bill in this cause shows that the Florence Bridge Company was a corporation created by the General Assembly of the State of Alabama; that the said corporation had authority to construct, maintain, and operate a toll-bridge over and across the Tennessee river at Florence, Alabama, and to charge and collect tolls; that the act of incorporation or charter of said bridge company contained no provision conferring any special or exclusive powers or restricting future legislative action; that it is further shown that said bridge was built and operated under the franchise so conferred by said act of the General Assembly
95 of the State of Alabama; that by section seven of said act of incorporation it was provided that the rates of toll for crossing the said bridge should never exceed the present rate of

ferriage at said ferry, which was merely a limitation upon the powers of said corporation or a limitation upon the powers of the county or commissioners' courts of Franklin and Lauderdale counties; that afterwards the Memphis & Charleston Railroad Company was incorporated by charters from the legislatures of the States of Tennessee and Alabama, and by its said charter was authorized "to purchase, have, and hold any bridge over which it was necessary to carry said railroad, and when said purchase was made to hold said bridge upon the said terms and with the same rights which belonged to the corporation from which the purchase was made;" that, claiming to act in pursuance of the same authority, the said Memphis & Charleston Railroad Company purchased the said toll-bridge of the said Florence Bridge Company and operated the said bridge under the charter of the said Florence Bridge Company, "having a toll-bridge for that purpose, and also a bridge over the toll-bridge for the use of the railroad business;" that afterwards, on the 9th day of February, 1895, the General Assembly of the State of Alabama passed an act regulating the rate of toll on said bridge, and the bill further shows that this suit is brought against this defendant to test the constitutionality and validity of the said act of the General Assembly of the State of Alabama regulating the rates of toll on and over the said bridge, and defendants allege that the said facts so alleged in the said bill show that the said Florence Bridge Company's toll-bridge so acquired by purchase by said railroad company was property affected with a public use at the date of said purchase and still is, and that the act of the General Assembly of the State of Alabama incorporating the said Florence Bridge Company conferred upon it no exclusive privilege or franchise and contained no provision or stipulation limiting the power of the State to regulate and control the rates of toll over the said bridge, but all the allegations of the said bill show that the
96 legislature retained and still has the power to control, regulate, alter, or reduce the rates of toll over or across said bridge, and the bill wholly fails to show any legislative interference or impairment of any chartered rights or privileges of the said plaintiffs in this suit, or that the act of the General Assembly of the State of Alabama regulating the rates of toll on the said bridge, enacted on the 9th of February, 1895, was not a valid and proper exercise of legislative power.

8th. The bill shows on its face that the legislature of the State of Alabama did have authority and power to reduce the tolls charged by complainants for crossing the said bridge, and the act of the General Assembly of the State of Alabama of February 9th, 1895, was a valid and proper exercise of legislative power and did not violate or impair any of the legal or constitutional rights of the complainant.

9th. The bill shows that the complainant's charter was granted to it only for the purpose of enabling it to construct and operate a railroad, and that its right to purchase and hold thoroughfares and bridges was only incidental to its right and power to operate a railroad, while the bill proceeds upon the theory that complainant has

all the original rights, franchises, and powers of a toll-bridge company, and in setting out the gross and net earnings of the Florence bridge and in alleging that the act of the legislature regulating the tolls thereon is confiscatory and unconstitutional, fails to show and set out the entire earnings of the bridge earned upon that part used in the business of the railroad as well as that part used as a toll-bridge.

10th. The bill is inconsistant in this, that it alleges that the value of the entire bridge is two hundred and fifty thousand dollars and of the thoroughfare one hundred and twenty-five thousand dollars, while it also shows by its exhibits that the value of the entire bridge is only two hundred and thirty thousand dollars and of the thoroughfare part of the bridge only $51,083.33.

97 11th. The bill fails to show what is the cost of the construction of said bridge, and that the rates fixed by the legislature in the act approved February 9th, 1895, are unreasonable and confiscatory or reduce the earnings of said bridge below a reasonable interest on the cost of construction.

12th. The bill seeks to nullify the act of the legislature of a sovereign State by alleging that complainant became entitled to chartered and vested rights protected by the Constitution of the United States by the purchase of such rights, and fails to show how, when, and by what deed or contract, if any, these rights and property were purchased and how, when, or in what manner alienated by the corporation to whom they were originally granted.

13th. The bill shows that even if the Memphis and Charleston Railroad Company acquired by a valid purchase all the rights, powers, and franchises of the Florence Bridge Company, a corporation, it acquired the same subject to the paramount right of the State by its legislature at any time to control and regulate the rates of toll thereon.

14th. The bill shows on its face that the rates fixed by the legislature in the act approved February 9th, 1895, were just and reasonable and were not less than rates charged for crossing other bridges whose cost of construction and value are far greater than that of the Florence bridge.

15th. The bill shows on its face that the complainants have a plain, complete, and adequate remedy at law.

16th. The bill shows that the General Assembly of the State of Alabama had the right to regulate the tolls on the said bridge as shown by the act passed February 9th, 1895.

17th. That the bill wholly fails to show any valid or legal purchase by the Memphis & Charleston Railroad Company of the bridge or property of the Florence Bridge Company in this, that it

98 does not set out or show that the Florence Bridge Company, a corporation, had any power or authority under its charter or any subsequent act of the legislature of the laws of Alabama to sell or alienate the said property.

19th. That the said bill and amendments thereto do not show that the Memphis and Charleston Railroad Company ever made

any valid or legal purchase of the bridge of the Florence Bridge Company, or that it has any title thereto.

Wherefore this defendant respectfully demands the judgment of this honorable court whether he shall be compelled to make any other or further answer to the said bill or any of the matters and things therein contained, and prays to be hence dismissed with his reasonable cost in this behalf expended.

ISAAC ORME,
Of Counsel for Defendant.

THE STATE OF ALABAMA, }
Colbert County. }

William H. Gilliam makes solemn oath and says he is one of the defendants in this cause, and that the foregoing demurrers are not interposed for delay.

WILLIAM H. GILLIAM.

Sworn to and subscribed before me on this the 22nd day of October, 1896.

JAMES H. SIMPSON,
Clerk of the Circuit Court, Colbert County, Alabama.

I hereby certify that in my opinion the foregoing demurrers are well founded in point of law.

ISAAC ORME,
Of Counsel for Defendants.

Endorsed: Filed October 16th, 1896. N. W. Trimble, clerk.

99 *Demurrers Overruled.*

CHARLES M. MCGHEE and HENRY FINK, as Receivers of Memphis & Charleston Railroad Company, *et als.*
vs.
WILLIAM C. OATES, as Governor of the State of Alabama, and Others. } No. 213. Equity.

This cause coming on to be heard on demurrers to bill by defendants William C. Oates, as governor of the State of Alabama, and William C. Fitts, as attorney general of the State of Alabama, and A. H. Carmichael, as solicitor for the eleventh judicial circuit of the State of Alabama, said demurrers having been filed in this cause June 13th, 1896; also the demurrer to the bill by the defendant William H. Gilliam, filed in this cause October 26th, 1896, and the said demurrers being duly considered by the court—

It is therefore ordered that said demurrers be, and the same are hereby, overruled, and the defendants are given thirty days in which to file answers in this cause.

Entered October 28th, 1896.

N. W. TRIMBLE, *Clerk.*

Answer to Bill and to Amended Bill.

CHARLES M. McGHEE and HENRY FINK, as Receivers of the Memphis & Charleston Railroad Company, and said Memphis & Charleston Railroad Co., Complainants,
vs.
THE STATE OF ALABAMA, WILLIAM C. OATES, as Governor of the State of Alabama; Wm. C. Fitts, as Attorney General of the State of Alabama, and *E.* H. Gilliam, Defendants.
} No. 213. Equity.

The answer of William C. Oates, as governor of the State of Alabama; William C. Fitts, as attorney general of Alabama, and A. H. Carmichael, as solicitor of the eleventh judicial district of Alabama, to the bill of complaint, to the amended bill, and to the supplemental bill of the above-named plaintiffs.

1st. We know nothing of the appointment of receivers for the Memphis & Charleston Railroad Company, and, if necessary,
100 require proof of the same.

2nd. We admit that the respondent William C. Oates is governor of Alabama and William C. Fitts is attorney general of Alabama, and that it is attempted in this suit to test the constitutionality of an act of the General Assembly of Alabama to fix the tolls on the Florence bridge, approved February 9th, 1895.

3rd. We deny that said Memphis & Charleston Railroad Company are the owners of the Florence bridge, but admit that the said act of the General Assembly of Alabama is correctly set out in words and figures in the third paragraph of said original bill.

4th. We deny that said Memphis & Charleston Railroad Company ever acquired the rights, franchises, and privileges to own and construct the Florence bridge, either in the manner stated in the fourth paragraph of the original bill or in any other manner whatever. We admit that the incorporation of the Florence Bridge Company is correctly stated in said paragraph, and that the act of incorporation, approved January 12th, 1832, is correctly set out in words and figures as Exhibit A A A to the bill, but we deny that section seven of said act, which says "that the rates of toll for crossing said bridge shall never exceed the present rates of ferriage at said ferry," means that the rates of toll shall never be higher than the tolls of the Florence ferry at the date of the incorporation of the Florence Bridge Company.

5th. We admit that the Florence Bridge Company was duly organized under its charter and constructed and operated a bridge at Florence in accordance therewith, but we expressly deny that said bridge was ever sold to said Memphis & Charleston Railroad Company, or that said Florence Bridge Company ever had the right or power to make any sale whatever. We allege the facts to be that said Florence bridge was laid on piers too weak to support a railway

bridge, and that the superstructure, the bridge proper, was so poorly and cheaply constructed that long before the Memphis & Charleston Railroad Company attempted to acquire said bridge or to
101 build a branch road to Florence the said bridge was blown away and was utterly destroyed, and we there*after* deny that the Florence Bridge Company operated its said bridge until the pretended sale of the Memphis & Charleston Railroad Company, but allege and show that at the time complainants say that said pretended sale took place and said railroad was extended to Florence there was no such structure as the Florence bridge; not one timber upon another; not even piers sufficient to support a bridge, and that the only facility for crossing the river at Florence was a ferry, for which license, as required by law, had duly issued to certain of the stockholders of the Florence Bridge Company, as will more fully appear from a certified copy of the minutes of the county court of Lauderdale county, Alabama, attached hereto and made a part of this answer as Exhibit 2.

6th. We do not know of the incorporation in the States of Tennessee and Alabama of the Memphis & Charleston Railroad Company, and, if necessary, demand proof of the same. We deny that the principle decided in Johnson *vs.* The State, 88th Ala., 176, covers the issues involved in this case, and suggest that the opinion of the supreme court in said cause shows that the judgment of the circuit court would not have been reversed had the decision of the supreme court of Tennessee been put in evidence, which held to be unconstitutional in that State the rights claimed in Alabama by the Memphis & Charleston Railroad Company in the said Johnson case.

7th. We expressly deny that under any power conferred by its Alabama charter or any charter the said Memphis & Charleston Railroad Company purchased from the Florence Bridge Company, some time in the year 1850, the Florence bridge, and we also deny that since said year said railroad company has operated said bridge under the charter of said bridge company or has operated the same at all from and since the year 1850 with a thoroughfare bridge below and a railroad bridge above, as stated in the seventh paragraph of the original bill. We allege that said Florence bridge
102 was operated by the Florence Bridge Company until the year 1854, when it was blown away and destroyed, and that afterwards for several years there was a ferry and hardly the semblance of a bridge at Florence, and so we deny that there was or could have been any actual purchase of a bridge when there was no bridge to purchase; but, even then, if there had been a real bridge extending over the river at Florence, much more do we deny that the said Memphis & Charleston Railroad Company purchased the same, because we allege that the Florence Bridge Company was granted the right and franchise to construct and operate the Florence bridge, which was a property affected with public use, but was not in the act of incorporation nor in any subsequent act of the General Assembly of Alabama invested with the power to sell and alienate all its property and all its franchises

so as to disable it from preforming its duties to its stockholders and to the public, as it is alleged in paragraph seven that said Florence Bridge Company attempted to do, by selling all its rights and franchises and property to the said Memphis & Charleston Railroad Company.

8th. The schedule of tolls on the Florence bridge as set out in the eight- paragraph are excessive, extortionate, and grossly high and unjust as compared with like charges for the same services in other localities, and, in addition to the schedule set out, ten cents is charged for each additional person more than the usual number in wagons or carriages. We allege that these rates are so high that commercial and social intercourse between the county of Colbert and the towns of Tuscumbia, Sheffield, and South Florence, on the one side, and the county of Lauderdale and city of Florence, on the other side, is practically cut off and interdicted. These tolls are an obstacle to the hauling of market products or of cotton in wagons to one side of the river or the other, the charge being one dollar and twenty cents for the round trip. They prevent the use of the free State and public schools of Florence by children residing on the south side of the river, the charge being for each child
103 8 cents for the round trip, or two dollars a month, or eighteen dollars each for the nine months of the scholastic year, or seventy-two dollars a year for a family of four children, the average number of children in the family—a sum of money which is equal to the entire yearly profits of many farming families, and which absolutely precludes these children from attending school. These rates are discriminative in favor of railway transportation on said bridge, the charge for a seat on the railroad from Florence to Tuscumbia, round trip, a distance of five miles, being twenty-six cents, while the round trip over the thoroughfare bridge, eight hundred yards long, for a foot passenger is twenty cents, or man and horse forty cents, the intention being to force the use of the railway, although the depot at Florence is situated near the northern abutment of the bridge, about one mile from the public school or the State normal college and almost a half mile from the business centre of Florence. The truth is that these rates, considering the difference in population since they were first established, show on their face that they are oppressive to the people, a defiance of the rights of the State which granted the franchises of the bridge, a bar to the development of all the section affected by them, and a disgrace to the corporation which imposes them, and an outrage to the public, which has so long suffered from them.

9th. We admit that the rates fixed by the act of the General Assembly of Alabama approved February 9th, 1895, *is* less than the rates for crossing the ferry in 1832, when the Florence bridge was incorporated; but we deny that the legislature of Alabama *were* without authority to regulate the use of the Florence bridge, and we deny that the General Assembly of Alabama in 1832 could bargain away to the Florence Bridge Company the sovereign right and police power to operate said property without government and regulation, and we expressly deny that any contract was made either

with the Florence Bridge Company or its pretended alienees,
104 the Memphis & Charleston Railroad Company, that the rates of toll to be charged on the said bridge should never be reduced below the old ferry rates. There are no words or stipulations in the charter of the Florence Bridge Company granting to that company any conclusive right to fix the toll on said bridge; there are no words which warrant or exclude said company or its property from legislative control, and there is nothing in the charter from which the slightest implication could arise that the legislature of 1832 had enacted as a bar to all future progress and development that the high rates charged for the difficult and dangerous transportation of the few persons and things by ferriage should be the exclusive and perpetual measure of charges for the passage of great numbers of people and hundred- of tons daily of freight over a bridge incorporated to supersede the old and inadequate by a new and improved means of transportation. We allege also that proper construction of section seven in said charter is a limitation on the powers of the county court to allow higher tolls than the ferry tolls, or a limitation upon the said Florence Bridge Company to charge more than was then charged at the ferry, and has no reference whatever to the power of the legislature to compel said corporation to make reasonable rates.

10th. The Florence bridge is correctly described in the 10th paragraph of the bill; but it is entirely different from the bridge authorized or contemplated by the charter of the Florence Bridge Company. It has been decided by the Supreme Court of the United States that a railroad bridge is not a bridge in the perview of an act of incorporation of a thoroughfare bridge; and the bridge now subsisting at Florence is not a wooden bridge, but a heavy iron railroad bridge, constructed for the purpose of supporting heavy railroad engines and cars; and the thoroughfare part consists merely of a plank floor fenced in with plank on each side, made not of iron, but of wood. So far from the cost of this part of the bridge being
105 $125,000, as alleged in said bill, its actual cost could not exceed one-fifth of that sum, and complainants show in an exhibit to the bill that by their own agreement the value of the thoroughfare part of the bridge is only about fifty thousand dollars.

We deny that the receipts and expenditures of said bridge are correctly set out, and allege the truth to be that said bridge is so managed that the receipts from thoroughfares are made to pay the wages of those employees who take care of the entire bridge. We allege that no fair statement of the earnings of the bridge can be made without setting out and calculating the earnings of the railroad bridge as well as its adjunct, the thoroughfare bridge, and that the attempt to separate the two for the purposes of this suit, when in fact both are operated together, and the traffic of the railroad bridge has largely increased at the expense of thoroughfare business, and if set out would show that said bridge, instead of being operated at a loss, pays annually a high rate of interest on the cost of construction, is misleading and inequitable. We allege that the lawsuits mentioned in the bill have been dismissed in favor of complainants

We admit that it is true that the rates prescribed by said statute are about the rates charged on the Saint Louis bridge; but we allege that the Saint Louis bridge cost eight million dollars, while the Florence bridge cost about two hundred thousand dollars.

We deny also that this is a fair test of what ought to be charged, because the rates for such services are nearly uniform in the United States. Railroad companies charge everywhere in this country 3c. a mile and street railways 5c. for each person, and bridges not exceeding the rates required by the Alabama statutes approved February 9th, 1895, and these charges are made without reference to whether the territory affected is very populous, as in Missouri and Illinois, or less so, as in Tennessee and Alabama, although we deny, as shown hereinafter, that the territory contiguous to the bridge is sparsely settled or that there would not be a great increase in
106 the traffic of said thoroughfare bridge if the rates were not extortionate and prohibitive.

11th. We deny that the tolls fixed by said act are unreasonable, or that said act amounts to a confiscation of complainant's property, or that it deprives complainant of its property without due process of law, or deprives complainant of the equal protection of the laws, and that said act should be declared invalid, inoperative, null, and void.

12th. We deny that said rates of toll, so fixed by the General Assembly of Alabama, are arbitrary and were fixed without giving complainants an opportunity of showing the receipts and expenditures on account of said bridge; on the contrary, we are informed that complainants sent its most able and earnest solicitors to Montgomery, who appeared before the committee of the General Assembly and argued the case of complainants before said committee, but that said committee and the General Assembly of the State, after full information and fair hearing and consideration, passed said bill, as it had a right to do, requiring the corporation operating said bridge to reduce its tolls to a fair charge for the service performed. We submit that complainant is charging for crossing the bridge substantially the same toll that was charged when the Florence bridge was incorporated; that Florence from a town of one thousand population in 1832 is now a city of seven thousand people; that while there were only about two thousand persons in the towns on both sides of the river in 1832 there are now twelve thousand; that while there was one iron furnace about twelve miles from the Florence bridge in 1832, with a capacity of eight tons of iron a day, there are now seven iron furnaces within one mile each of said bridge and using the same for raw and manufactured material, with an average capacity of one hundred and fifty tons each of pig-iron daily; that in 1832 there were practically no manufactories near said bridge, while now there is a cotton compress,
107 a cotton factor consuming 3,000 bales of cotton annually, a large and successful wagon factory, a pump factory and stove factory, and other industrial plants requiring men and material to be carried over said bridge; that in 1832 there was no railroad in Florence, Tuscumbia, or Sheffield, while now there are three

in operation and a fourth graded and bridged, two of which use the Florence bridge so constantly that they operate each a switch-engine over the bridge, while the third has its northern terminus at Sheffield and runs directly south to Birmingham and Montgomery and is used by the people of Florence to reach those cities. Florence is also the southern terminus of the great Muscle Shoals canal, constructed by the Government at a cost of $3,000,000. It is a successful and flourishing town, and so are Tuscumbia and Sheffield, and the country has developed and is rapidly developing to a point where the ferry charges of 1832, contended for as being reasonable in complainants' bill, are not only obsolete, narrow, and destructive, but are a menace to the prosperity of the people and an insult to their intelligence.

13th. We deny that the purpose of the penalty clauses of said act was to deter complainant- from questioning its constitutionality. The futility of any such attempt is convincing that the General Assembly and its law committees had no such intention, but inserted the provisions complained of only in order to compell complainant- to comply with the clear and positive and reasonable requirements of said statute.

14th. We deny that complainants are without remedy except by a bill in equity in this court. On the contrary, they have the right in the law courts of the State of Alabama to test the constitutional-ty of this statute. We believe that the construction of this statute of the State of Alabama with reference to a corporation of the State of Alabama ought to have been first made in the courts of said State,
with an appeal, if necessary, to the United States court,
108 just as was done in the Georgia case, 128 U. S. Reports, in
the final construction of an exactly similar charter.

And said defendant-, further answering the amended bills of complainant-, says:

15th. That the demands made by the many persons complained of in this paragraph of the amended bill were just and legal and were a proper manifestation of the intolerable grievances of the people arising out of the long-continued extortions, of complaint of unusual and heavy tolls on the bridge, and its flagrant disregard of the statute of the State putting an end to these exactions.

16th. And that it became the duty of the officers of the State to proceed and enforce this just statute of the State and of citizens of the State to proceed to assert their rights in the courts of the State, which said duty and rights, we respectfully submit, ought not to have been interfered with by an injunction from this court.

17th. Section seventeen shows only that officers and citizens of the State of Alabama, not with force of arms, as they have been provoked to do by complainants, but in strict and careful conformity with the law, were proceeding to require the obedience of the servants of complainants to the laws of the State. We allege that this action is no ground for complaint, but ought to be commended by this court.

And defendant-, further answering the supplemental bill of complainants, says:

1st. We admit that A. H. Carmichael is solicitor of the 11th judicial circuit of Alabama, and that Tom Clem and G. W. Brabson were employees of complainant; but we deny that in making charges for tolls on the Florence bridge the operators of the Florence bridge have acted under any specific order or direction of this court as to the amount of said tolls.

2nd. This section is a repetition of matters asserted in the
109 original bill and already sufficiently answered. We deny the law and the facts stated in said paragraph, except the act requiring complainants to charge reasonable tolls on said bridge.

3rd. We repeat and confirm our answer to the original bill.

4th. We have been informed of the indictment and arrest of the servants of complainant for extortion, but we believe and assert if they charged higher tolls than those prescribed in the act of Alabama approved February 9, 1895, they ought to have been indicted and punished with the maximum penalties of the criminal statutes of the State. We disclaim any intention or act of contempt of this or any court or any intention to violate any law or legal order of any court. We solemnly affirm that our duty and position is to sustain the law against the indifference and defiance thereof by the operators and employees of the Florence bridge; and we respectfully deny that the jurisdiction of this court ought to have been or can be invoked in this case, and we respectfully submit that the injunction awarded to complainant in this cause ought to be dissolved and that the said bills ought to be dismissed with costs.

O'NEAL & WOOD,
Solicitors for Defendants.

THE STATE OF ALABAMA, }
Montgomery County. }

Before me, Sterling A. Wood, clerk of the supreme court of Alabama, personally appeared William C. Oates, governor of Alabama, and William C. Fitts, attorney general of Alabama, who, being duly sworn, on oath say that the facts stated in the foregoing answers of their own knowledge are true and correct and those stated on information they believe to be true.

WILLIAM C. OATES.
WILLIAM C. FITTS.

Sworn to and subscribed before me this 23rd day of November, 1896.

110 [SEAL.] STERLING A. WOOD,
Clerk Supreme Court.

THE STATE OF ALABAMA, }
Colbert County. }

Before me, James H. Simpson, clerk of the circuit court of said State and county, personally appeared A. H. Carmichael, solicitor of the eleventh judicial circuit of Alabama, who, being duly sworn, on oath says that the facts stated in the foregoing answer as of his

own knowledge are true and correct and those stated on information he believes to be true.

A. H. CARMICHAEL.

Sworn to and subscribed before me this Nov. 27th, 1896.

JAMES H. SIMPSON,
Clerk of the Circuit Court.

[SEAL.]

EXHIBIT TWO.

THE STATE OF ALABAMA, }
Lauderdale County. }

James Irvine, James H. Weakley, John Simpson, Martin Hawkins, and Robert M. Patton applied this day to our said court for a license authorizing them to establish a ferry across the Tennessee river at what is known as the Florence landing, at or near where the bridge was erected that was carried away by a storm on the 10th day of March last, and it appearing to the court that the said James Irvine, James H. Weakley, John Simpson, Martin Hawkins, and R. M. Patton are the joint owners of the land on the north side of said river and at the place contemplated for said ferry landing, it is therefore ordered by the court that a license issue to the said applicants upon their executing bond in a penalty of ten thousand —,
111 as the statute directs, authorizing them to establish said ferry for the term of ten years, to be governed and conducted in all things as the statute directs. It is further ordered that the following rates of ferriage be established at said ferry, to wit:

For six-horse wagon, loaded	$1 50
Empty do. do.	1 25
Four-horse wagon, loaded	1 25
Empty do. do.	1 00
For two or three, loaded or empty	1 00
For two-horse carriage	1 00
For two-horse buggy	75
For one-horse carryall or buggy	50
Horse and man	25
Footman	15
Horses in droves, per head	10
Cattle	10
Hogs	04
Sheep	04
Turkeys	01

STATE OF ALABAMA, }
Lauderdale County. }

I, W. B. McClure, judge of probate in and for said State and county, hereby certify that the above is a true and correct copy of the minutes of the commissioners' court of said county at the May term, 1854, thereof.

Witness my hand and seal of office this 16th day of November, 1896.

[SEAL.] W. B. McCLURE,
Judge of Probate.

Endorsed: Filed in clerk's office November 27th, 1896. N. W. Trimble, clerk.

112 *Notice to Take Testimony.*

Circuit Court of the United States, Northern District of Alabama, Northern Division.

CHARLES M. McGHEE and HENRY FINK, as Receivers of Memphis & Charleston Railroad Company, and the said Memphis & Charleston Railroad Co., Complainants, *vs.* WILLIAM C. OATES, as Governor of the State of Alabama; William C. Fitts, as Attorney General of the State of Alabama; William H. Gilliam, and A. H. Carmichael, as Solicitor, etc., Defendants.	No. 213. Equity.

To Humes, Sheffey & Speake, solicitors for complainants:

Notice is hereby given that we shall proceed to take proofs for the final hearing on the part of defendants under the 67th rule of the Supreme Court for the courts in equity, as amended, or in accordance with the statutes in such cases made and provided and in pursuance of the rules and practice of this court, orally, before John B. Weakley, Jr., Esq., or some other proper office-, on the 23rd day of December, 1896, at 9 o'clock a. m., at his office in Florence, Alabama.

The names and residences of the witnesses who live at a greater distance from the place of trial than one hundred miles, whom it is intended to examine, are stated below.

You are invited to attend and cross-examine any witnesses produced. The examination will be adjourned from day to day and to such time and place as may be required without further notice.

O'NEAL AND WOOD,
Solicitors for Defendants.

Names of witnesses: Silas G. Barr, Corinth, Miss.; Alexander D. Coffee, Florence, Alabama; Samuel D. Weakley, Florence, Ala.; Henry C. Wood, Florence, Alabama; J. Overton Ewin, Florence, Ala.

Endorsed: Filed in clerk's office Dec. 12th, 1896. N. W. Trimble, clerk.

113 *Motion to Dis-olve Injunction.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

CHARLES M. McGHEE and HENRY FINK, as Receivers of Memphis & Charleston Railroad Company, and the said Memphis & Charleston Railroad Co., Complainants,
vs.
WILLIAM C. OATES, as Governor of the State of Alabama; William C. Fitts, as Attorney General of the State of Alabama; William H. Gilliam, and A. H. Carmichael, as Solicitor, etc., Defendants.
No. 213. Equity.

Now comes the defendants in said cause and move the court to dissolve the injunction granted in said cause, and as grounds for said motion states:

1st. That there is no equity in said bill—original, amended, and supplemental.

2nd. That the statute and law of the United States prohibit the injunction of proceedings in a State court.

3rd. That the bill, original, amended, or supplemental, shows on the face that it is a suit against the State of Alabama, and such a suit is prohibited by the Constitution of the United States.

4th. That the answer- filed by said defendants contain full and complete denial of the substantial averments and equities of the original and supplemental bills.

5th. That the original and supplemental bills seek to enjoin A. H. Carmichael, as solicitor of the eleventh judicial circuit, from instituting criminal prosecution in the performance of his duties as such solicitor.

6th. That the bill-, original and supplemental, seek to enjoin the governor, attorney general, and solicitor of the 11th judicial circuit of Alabama in the performance of their official duties.

7th. That the bills fail to show that William C. Oates, as governor of Alabama; William C. Fitts, as attorney general of
114 Alabama, and A. H. Carmichael, as solicitor of the 11th judicial circuit, are necessary or proper parties defendants. *It* shows that they are mere nominal parties, and that the State of Alabama is the real party defendant.

8th. That the complainants do not show that the Memphis & Charleston Railroad Company have any contract which the State of Alabama has ever sought to impair.

9th. That the complainants do not show that William C. Oates, as governor of the State of Alabama; William C. Fitts, as attorney general of the State of Alabama, and A. H. Carmichael, as solicitor of the 11th judicial circuit of Alabama, have done any act, or wrong, or injury, or threatened to do any act, or wrong, or injury to com-

plainant- in the execution or enforcement of the alleged statute claimed to be unconstitutional, null, and void.

Wherefore defendants pray that the said injunction or restraining order heretofore granted in said cause be dissolved.

O'NEAL AND WOOD,
Solicitors for Defendants.

Endorsed: Filed in clerk's office January 4th, 1897. N. W. Trimble, clerk.

Motion to Dismiss.

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

CHARLES M. McGHEE and HENRY FINK, as Receivers of Memphis and Charleston Railroad Co., and the said Memphis & Charleston Railroad Co., Complainants,
vs.
WILLIAM C. OATES, as Governor of the State of Alabama; William C. Fitts, as Attorney General of the State of Alabama; William H. Gilliam, and A. H. Carmichael, as Solicitor, etc., Defendants. } No. 213. Equity.

Now comes the defendants in the above-styled cause and
115 move the court to dismiss the original and supplemental bills in this cause, and as grounds for said motion state:

1st. That there is no equity in said bills.

2nd. That the complainants have a plain, complete, and adequate remedy at law.

Wherefore defendants move that said original, amended, and supplemental bills be dismissed.

O'NEAL AND WOOD,
Solicitors for Defendants.

Endorsed: Filed in clerk's office January 4th, 1897. N. W. Trimble, clerk.

Order Reserving Decision.

CHARLES M. McGHEE and HENRY FINK, as Receivers of Memphis & Charleston Railroad Company, *et als.*
vs.
WILLIAM C. OATES, as Governor of the State of Alabama, and Others. } No. 213. Equity

This cause now coming on to be heard upon the pleadings and testimony, and the same having been argued by Messrs. Humes, Sheffey, and Speake, on the part of the complainant-, and by Messrs Wood and O'Neal, on the part of the respondents, was sub

mitted on the bill of complaint, the answers, pleadings, and evidence as noted, and the briefs of counsel in addition to oral argument, and the court takes the same under consideration and will render the decision in vacation, and either party may take additional testimony before decision is rendered.

Entered Wednesday, June 6th, 1897.

N. W. TRIMBLE, *Clerk.*

116 *Statement of Evidence.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

CHARLES M. MCGHEE and HENRY FINK, as Receivers of the Memphis & Charleston Railroad Co., and said Memphis & Charleston Railroad Co., Complainants,

vs.

WILLIAM C. OATES, as Governor of the State of Alabama; William C. Fitts, as Attorney General of the State of Alabama; William H. Gilliam, and A. H. Carmichael, as Solicitor, etc., Defendants.

No. 213. Equity.

Now comes the defendants William C. Oates, as governor of the State of Alabama, and William C. Fitts, as attorney general of the State of Alabama, and A. H. Carmichael, as solicitor for the 11th judicial circuit of Alabama, and submit the cause for final hearing upon the following pleadings and proof, to wit:

1st. Demurrers to original and supplemental bill-.

2nd. Motion to dismiss original, supplemental, and amended bill for want of equity.

3rd. Motion to dis-olve the injunction in this cause on averments and denials of answers.

4th. Motion to dismiss original and amended bills and supplemental bills because it is in effect a suit against the State of Alabama, in violation of the 11th amendment to the Constitution of the United States.

5th. Joint answer of William C. Oates, as governor of the State of Alabama; William C. Fitts, as attorney general of the State of Alabama, and A. H. Carmichael, as solicitor for 11th jucicial circuit—amended answer.

6th. Depositions of A. D. Coffee, Samuel D. Weakley, Henry W. Sample, J. Overton Ewing, George P. Arthur, J. C. Conner. Bond taken on behalf of defendants.

O'NEAL AND WOOD,
Solicitors for Defendants.

117 Endorsed: Filed in clerk's office January 7th, 1897. N. W. Trimble, clerk.

Depositions.

Certificate of commissioner.

UNITED STATES OF AMERICA,
Northern District of Alabama, Northern Division.

Be it remembered that on this 13th day of April, A. D. 1896, I, Ed. E. Greenleaf, an examiner in equity and a commissioner of the circuit court of the United States in and for said district, duly appointed and commissioned and qualified as such, did, under and by virtue of the several acts of Congress authorizing and regulating the taking of depositions *de bene esse* in civil causes pending in the circuit and district courts of the United States, cause to come before me at the office of Messrs. Humes, Sheffey and Speake, attorneys, at Huntsville, in the county of Madison and State of Alabama, in said division and district, between the hours of ten o'clock a. m. and three o'clock p. m. of said day, the following persons, to wit, R. B. Pegram, Thomas Clem, W. P. Stradford, H. T. Morrison, G. W. Brabson, T. C. Walker, and W. H. Gilliam, to be examined as witnesses in a cause pending in the circuit court of the United States for the northern division of the northern district of Alabama, wherein Charles M. McGhee and Henry Fink, receivers of the Memphis and Charleston railroad, and The Memphis & Charleston Railroad Company are complainants and William C. Oates, as governor of the State of Alabama, and William C. Fitts, as attorney general of the State of Alabama, and A. H. Carmichael, as solicitor of the 11th judicial circuit of Alabama, *et als.* are defendants, and the said R. B. Pegram, Thomas Clem, W. P. Stradford, H. T. Morrison, G. W. Brabson, T. G. Walker, and W. H. Gilliam, all being of lawful age and each and all of them being by me cautioned and sworn to testify
118 the whole truth, depose and say as hereinafter set forth, it being agreed by counsel that the depositions of the several parties named above might be taken by stenographer, and after being reduced to writing the several depositions were read and signed by the deponent-.

Deposition of Maj. R. B. Pegram.

Said R. B. PEGRAM, being duly sworn to speak the truth, doth depose and say as follows:

Q. What is your name and age, and where do you reside?

A. R. B. Pegram; am 47 years old; general superintendent of the Memphis & Charleston railroad; reside in Memphis, Tennessee.

Q. How long have you been superintendent of the Memphis & Charleston railroad?

A. I was superintendent from 1881 to 1895, and since then have been the general superintendent from May, 1895, to April, 1896.

Q. What were the earnings of the Florence toll-bridge, belonging to the Memphis & Charleston railroad, from January 1st to December 31st, 1894?

A. I herewith append a statement showing the earnings of the public toll-bridge at Florence, belonging to the Memphis & Charleston Railroad Company, crossing the Tennessee river at Florence, Alabama, from January 1st to December 31st, 1894, and another statement showing the expense of operating the said bridge for the same period.

Q. Look at the statements and say if they are correct.

A. I have looked at the statements, and they are correct according to my best knowledge and belief.

Q. What is this bridge used for and what is it intended for?

A. The bridge was originally a toll-bridge for the passage of foot passengers and vehicles. The old bridge was bought by the Memphis & Charleston Railroad Company, rebuilt and made a foot and wagon bridge and a railroad bridge combined.

Q. From whom did the Memphis & Charleston acquire its ownership of it?

119 A. From the Florence Bridge Company.

Q. You say the bridge was constructed for the twofold purpose of crossing passengers on foot and in vehicles and for the purpose of use by the railroad in operating and running its line of road?

A. Yes, sir.

Q. And for this latter purpose that there is a track overhead on which the cars run?

A. Yes.

Q. State what sort of a structure this bridge is and of what material it is constructed.

A. The present bridge has stone abutments and piers, and in superstructure is a first-class steel bridge, the most approved style.

Q. What is the length of the bridge?

A. A little over two thousand feet between abutments.

Q. What is the entire length of the bridge?

A. The entire length of the railroad bridge is about half a mile.

Q. Has it or not a draw for the purpose of steamboats passing?

A. It has a very large draw, second to the largest in the United States, operated by a steam-engine. The draw is four hundred and twelve feet long.

Q. What were the gross earnings from the toll collected from the toll-bridge for the twelve months ending Dec. 31st, 1894?

A. $3,281.92. The expense of the toll-bridge alone for salaries of the toll-keepers, watchman, and one half salary of the engineer, the other half being charged to the other or railroad portion of the bridge, for this period, $1,262.50.

Q. How often does the floor of the bridge have to be replaced?

A. About every four years.

Q. What quantity of lumber does it take, what kind is used, and what does it cost?

A. The floor of this bridge has to be replaced about every four years. It requires about one hundred thousand feet, B. M., heart lumber, at $12.00 per M; cost of labor, $400.00; cost of paint-

120 ing and material, once in four years, $2,200.00, making an average cost per year of $555.00. This, together with the ex-

pense of toll-keepers and watchman, makes $1,817.50 per year. This is actual expense and does not provide for any contingencies.

The total earnings are 3,281.92 and the actual expense $1,817.50, outside of contingencies such as may be caused by accidents to persons, vehicles, or animals crossing the bridge, and the expense incurred in reference to such contingencies leaves less — $1,464.42 to pay taxes, insurance, and incidentals.

We nearly always have lawsuits on hand of the character above referred to. At the time this suit was brought there were two of these lawsuits in the courts of Alabama, one for a horse becoming frightened and running away on the bridge, and the other for a party being injured on the bridge.

Assuming that the valuation of the toll-bridge is one-half of the total cost of the bridge, this assumption being based upon the theory or idea that the toll-bridge was built first and the superstructure was only strengthened to carry the railroad trains on the railroad portion of the bridge, the net earnings of the toll-bridge would be less than one per cent. interest on the amount actually invested in the structure, making no allowance for contingent liabilities.

The act of the legislature which is complained of in this case, a copy of which is made a part of the original bill of complaint, passed at the last session of the General Assembly of Alabama, fixes the rate of toll over this bridge at exactly one-half of the rate of toll which is now charged and which were charged at the time of the passage of the act by the railroad company. Owing to the limited population on both sides of the river, in my opinion the increased use of the bridge *on* account of the decreased toll would not
121 be appreciable, and that the effect of the act would be that for operating this part of the bridge the gross earnings would be greatly less than the expense of operating. Assuming that the rate of increase in business would be 20 %, the reduction provided by the act would be such that the gross earnings would just about equalize the expense and the owners of the bridge would be furnishing free service to the public for the use of it.

The toll fixed by the act for foot passengers is 05c. This is the same as the rate of the St. Louis bridge crossing the Mississippi river at St. Louis, Mo. The average number *of* passing over this last-named bridge daily is about 15,000, and the average number over this bridge at Florence is about seventeen (17), and the proportion of travel as to vehicles, etc., is about the same. The tolls of the Florence bridge are not largely in excess of those charged by the St. Louis bridge. The rate, for instance, over the St. Louis bridge for a two-horse wagon-load, according to my recollection, is 50c.; over the Florence bridge it is 60c.

Q. Is it not a fact that this toll-bridge necessitates this draw?

A. No; it would have to be there anyhow.

Q. What is the actual estimated cost of this bridge?

A. I would estimate value of the bridge and the cost — its construction at at least $250,000.

Q. What difference, if any, has there been during the last five or six years in the receipts from this toll-bridge?

A. My impression is that the receipts of the toll-bridge are somewhat reduced now from what they were several years ago, and that there has been a gradual decrease in the receipts of this toll-bridge. This is in part attributable to the fact that the railroad portion of the bridge is used by the L. & N. as well as the M. & C., and that there are trains very frequently passing over the railroad bridge between Florence and Sheffield, and the charge for tickets
122 on the railroad is about 3 cents per mile, the charge from Sheffield to Florence being 10 cents, and from Tuscumbia to Florence 16 cents on the train.

Q. Refer to Exhibit B B B to the original bill of complaint in the case and state what was the basis of the valuation of the bridge therein stated and what was that valuation for.

A. That valuation was for the basis of a contract between the Memphis and Charleston Railroad Co. and the N., F. & S. R. R. Co., whose property is now operated by the L. & N. Railroad Co. across the Tennessee river at Florence, and the valuation there fixed upon the entire bridge and the toll-bridge were principally upon the basis of revenue as well as valuation, and the assessed valuation of the property was arbitrarily fixed by the contract without reference to the actual relative cost of the toll portion of the bridge to the whole structure; and, as I have stated, this valuation was upon an estimated basis of revenue rather then the cost of construction and the material.

Cross-examination of R. B. PEGRAM:

Q. These statements that you have made, by whom were they furnished you?

A. They were taken from the books of the company.

Q. These books being in the possession of the toll-keeper?

A. No; he makes his report to the auditor every month, who makes his report every month.

Q. Will you state, then, that these statements are true and correct?

A. Yes; as well as I can state them without making them myself. I know they are correct, as far as I can judge of the statements coming from a bonded employee.

Q. You have no other way of ascertaining what toll is taken in except by his statement?

A. No; his statement shows exactly as it is taken in every day.

Q. Will you state, as near as possible, the total valuation of the Florence bridge, both as to the railroad bridge and the
123 whole structure?

A. The total valuation of the bridge is about $250,000. I do not think the bridge could be built for that.

Q. State the amount received from the Louisville and Nashville as rental over this bridge.

A. I cannot state the exact amount. My recollection is that the bridge and renewals are valued at $230,000, less *than* 22.8% for the toll-bridge, which would be about $52,000.00, to be deducted, and this would leave the valuation of the bridge between $177,000.00

and $178,000.00. This valuation being fixed, the rental is to be at the rate of 7% per annum on this amount, to be paid proportionately by the two roads, according to the number of cars and engines passed over the bridge by each road. For illustration, if the Memphis & Charleston R. R. hauls 500 cars over the bridge in a month and the L. & N. hauls 500 cars over the bridge in the same month, each road would pay 3½ % interest. If the L. & N. hauls 75 % and the M. & C. 25 % of the cars over the bridge in a month, then the L. & N. would pay 2¾ % of 7 %, which would be 5¼ % interest, and the M. & C. would pay 25—that is, 1¾ % ; that is for that portion of the bridge which is assessed as being used for the railroad portion and not the assessed valuation of the entire structure.

Q. Can you state approximately the per cent. that the L. & N. pay a month?

A. No; I could not; it varies every month. All things being equal, as upon the basis of the agreement between the L. & N. and the M. & C. R. R. Co., it would pay to the M. & C. R. R. Co. about $520 per month, approximately. The receivers of the M. & C. R. R. Co. receive the toll of the bridge across the Tennessee river at Florence, Alabama, and keep up the bridge and bear all expenses.

Q. The net earnings, approximately, one year with another, at the bridge, amount to what?

A. We have no net earnings, but are running at a loss.

Q. You did not accept the toll prescribed by the legisla-
124 ture at the last term of the General Assembly of Alabama?

A. No; we did not accept the rates prescribed by the legislature, for the reason that the company had an injunction preventing the State from collecting it.

Q. Did you instruct the employees there not to recognize them?

A. Yes; that they should enforce the regular rates until they received instructions to the contrary, and they received no instructions to the contrary.

(Signed) R. B. PEGRAM.

EXHIBIT "A."

Statement of Earnings of Florence Bridge from January 1st to December 31st, 1894, Both Inclusive.

January	$259 36
February	202 26
March	238 32
April	277 22
May	235 66
June	204 88
July	257 90
August	271 80
September	262 20
October	330 52
November	385 88
December	355 92
Total for 12 months	$3,281 92

125 EXHIBIT "B."

Statement of Expenses Operating Toll-bridge at Florence, Alabama.

	½ salary engineer.	Salary toll-collector.	Salary toll-col. and watchman.	Oil waste and fuel.	Total.
Jan'y	$21.38	$42.75	$42.75	$1.36	$108.24
Feb'y	21.38	42.75	42.75	.79	107.67
M'ch	21.37	42.75	42.75	.75	107.67
April	21.37	42.75	42.75	2.23	109.10
May	20.25	40.50	40.50	.85	102.10
June	20.25	40.50	40.50	.75	102.06
July	20.25	40.50	40.50	1.00	102.25
Aug	20.25	40.50	40.50	.65	101.90
Sept	20.25	40.50	40.50	.80	102.05
Oct	20.25	40.50	40.50	.25	101.50
Nov	20.25	40.50	40.50	1.10	102.35
Dec	20.25	40.50	40.50	.79	102.04
				Fuel, 13.68	13.68
	$247.50	$495.00	$495.00	$25.00	$1,262.50

Deposition of Thomas Clem.

THOMAS CLEM, being duly sworn to speak the truth, doth depose and say as follows:

Q. What is your name and age, and where do you reside?

A. Thomas Clem; I live at South Florence, Ala., and am 62 years old.

Q. How long have you been living at Florence?

A. About 18 years.

Q. What time did you move there?

A. I moved in March of 1878.

Q. How long have you been acting as the toll-gate keeper of the bridge which was then operated by the Memphis & Charleston R. R. Company?

A. Six years.

Q. Were you ever a watchman on the bridge prior to that time?

A. Yes.

Q. When did you begin as watchman there?

A. In 1878.

126 Q. You acted in the capacity of watchman until six years ago?

A. Yes.

Q. State what was the toll for horses, mules, and cattle in droves going over the bridge, per head.

A. 10 cents.

Q. One person?

A. 10 cents.

Q. Man and horse?

A. 20 cents.

Q. One-horse wagon and one-horse buggy or cart?
A. 30 cents.
Q. Drays?
A. 30 cents.
Q. Two-horse wagon or carriage?
A. 50 cents.
Q. Two-horse carriage, capacity of six persons?
A. 70 cents.
Q. A two-horse carriage, capacity of eight persons?
A. 80 cents.
Q. Two-horse or ox wagon?
A. 60 cents.
Q. Four-horse or ox wagon?
A. 75 cents.
Q. Six-horse or ox wagon?
A. $1.00.
Q. Special school children's tickets?
A. 04 cents.
Q. State whether or not the rates you have named are the same rates that are now charged by the receivers of the Memphis & Charleston.
A. Yes, they are the same. These rates have been in operation since——
Q. These rates have been in operation since 1878, according to your knowledge?
A. Yes.
Q. Did you ever talk with any of the ferry-keepers at the ferry above and below as to the rates of toll?
A. Yes.
Q. What ones?
A. The one at Bainbridge.
Q. State whether the rate of toll charged at the Memphis & Charleston are less than those at Bainbridge.
A. They are less.
Q. Have you ever talked with any of them below?
A. No, I never see any of them.

Cross-examination of THOMAS CLEM:

Q. Mr. Clem, you stated, I believe, that you did not know of your own knowledge what the rate of toll is at Bainbridge?
127 A. No, sir; only what I hear them say.
Q. State whether you know the rate of toll charged by the ferry at Florence and that charged by the Florence Bridge Company.
A. I do not know anything about what was charged by the ferry at Florence or what was charged by the Florence Bridge Company.
Q. Mr. Clem, I want to know whether or not one of the defendants, Mr. W. H. Gilliam, ever tendered you, for himself and horse, the rate of toll less than that fixed by the railroad company?
A. Yes, he tendered me a fare of 05 cents, which I refused, and he then paid me 10 cents under prosest.

Rebuttal.

Q. Have you or not had any conversation with the ferryman at Bainbridge ferry, above Florence? If so, state whether or not the rates of toll charged on the Memphis & Charleston bridge are more or less than those charged by the Bainbridge ferry.

A. They are less.

Q. Mr. Clem, why did you refuse to let Mr. Gilliam cross for less than 10 cents?

A. I was charging the rate of toll that I always charge everybody.

Q. What difference, if any, has there been in the last five or six years in the receipts from this toll-bridge?

A. They are declining all the time.

(Signed) THOMAS CLEM.

Deposition of W. P. Stradford.

Said W. P. STRADFORD, being duly sworn to speak the truth, doth depose and say as follows:

My name is W. P. Stradford; was 71 years old the 21st day of March last. I live ten miles south of Birmingham, in Jefferson county, Alabama. The bridge was open to travel on the 26th day of April, 1870, for the first time after the war. It had
128 been burned by the army during the war, and afterwards rebuilt.

I was employed by the Memphis & Charleston R. R. Company as toll-gate keeper from April, 1870, until July 1st, 1882. The rates of toll during that time were as follows:

Rate for turkeys, $ .01; hogs or sheep, .04; horses, mules, and cattle, each, .10; man on horse, .25; foot passengers, .10; one-horse cart or dray, .50; one-horse buggy or carriage, .75; 2-horse carriage or buggy, 1.00; 2-horse wagon, empty or loaded, 1.00; 4-horse wagon, empty, 1.00; 4-horse wagon, loaded, 1.25; 6-horse wagon, empty, 1.25; 6-horse wagon, loaded, 1.50. In 1877 or 1878 there was a reduction in the tolls, as well as I remember. A man and a horse was, then, 20c.; one-horse cart or dray, 30 cents, and a one-horse buggy or carriage, 30 cents, and a two-horse buggy or carriage, 50 cents, and a two-horse wagon, empty or loaded, 60 cents, and four-horse, 75 cents, and six-horse, $1.00. This continued the rates until I left the bridge, in 1882. I do not know what the rates or toll charged by the Memphis and Charleston R. R. were before the war. The rates of toll by the bridge company were, 10 cents for a foot passenger. I only know this from the fact that I crossed there and paid that for crossing. The entire bridge was destroyed during the war, and rebuilt. It was rebuilt by the Memphis and Charleston R. R. Company.

I was succeeded by Mr. Norvill.

Cross-examination of Mr. STRADFORD:

Q. You know nothing of the ferriage that was charged by the ferry below the bridge?
A. No.
Q. You know nothing of the charge of the Florence Bridge Company except as to foot passengers?
A. No.
(Signed) W. P. STRADFORD.

129 *Deposition of H. T. Morrison.*

Said H. T. MORRISON, being first duly sworn to speak the truth, doth depose and say as follows:

I am a citizen of the city of Florence county of Lauderdale, and State of Alabama. I am 45 years old, and have lived in Florence all of my life. I am the son of Z. P. Morrison, now deceased, who was at the time of his death, which occur-ed the earlier part of last year, one of the oldest residents of Florence.

My father leased the old ferry privileges at Florence, near where the Memphis and Charleston Railroad Company bridge now is across the Tennessee river at Florence, the year after the civil war—that is, about the year 1866. I know what the toll rates or charges my father made for transporting or ferrying people over the river on said ferry were, and the following is the rate charged: For horses, mules, or cattle in droves of ten or less, each, 25 cents; for horses, mules, or cattle in droves of more than ten, each, 15 cents; one person, 25 cents; one man and horse, 50 cents; one-horse buggy, cart, or dray, 75 cents; 2-horse carriage or buggy, $1.00; 2-horse carriage, capacity six persons, $1.00; 2-horse or ox wagon, $1.00; 4-horse or ox wagon, $1.50; 6-horse or ox wagon, $2.00.

According to my best information, the toll rates were never lower than this up to the time the M. & C. railroad rebuilt its bridge at Florence after the war, and I think they were even higher than the above rates until they were reduced by the legislature or in some other way. I helped to run and operate the ferry at Bainbridge, some six miles above the city of Florence at the same time the said ferry was operated by my father, Z. P. Morrison, at Florence, and the rates of toll were the same at both places, and for this reason I am informed about the matter.

Cross-examination of H. T. MORRISON:

Q. Mr. Morrison, how old were you when your father op-
130 erated the ferry at Florence?
A. I was born in 1851. The year after the war, in 1866, he began running the ferry at Florence, and he leased it through Gov. Patton.
Q. How old were you then?
A. About 15 or 16 years old.

Q. You state that you know the rates of toll charged by your father then?

A. Yes.

Q. How long did he run the ferry?

A. A year or perhaps two years; I cannot say positively.

Q. Now, Mr. Morrison, just tell me how do you know that these rates of toll were charged; did you ever collect the fares?

A. When my father was operating the ferry I was on the ferry most of the time.

Q. Well did you ever collect the fares?

A. Some time I did.

Q. And you are positive that these are the rates?

A. Yes.

Q. And you are positive that these are the rates charged by him for the different purpose above stated?

A. Yes.

Q. When did you operate the Bainbridge ferry?

A. I could not say; at different times. I had charge of it myself up to 1882. I was running the ferry at Bainbridge at the time that the tolls were reduced to this by the legislature. The tolls—that is, on the ferry—used to be a $1.25 for a two-horse wagon, $1.00 for a buggy and single horse, 50 cents for a man and horse, 25 cents for a single horse, and the rules went on to say that all loose horses, under ten in a drove, 25 cents, and over ten, 15 cents.

Q. Now, I understand you to say that the rates of toll you speak of were the rates at Bainbridge?

A. Yes; they are the old rates charged at the ferry, both at Bainbridge and at Florence. My father owned the Bainbridge ferry, and he rented the Florence ferry and run them both at the same time.

The estate now owns the privilege of the Bainbridge ferry.

131 Q. The above rates were charged until that time?

A. Until the time that the last bridge was rebuilt on the Memphis & Charleston. Davidson and others applied to the legislature to have all the tolls reduced at the ferry-s, and they were reduced by the legislature to the rates above stated by me.

Q. You speak of the tolls being reduced before the bridge was rebuilt; that bridge has been rebuilt 3 or 4 times.

A. These rates were lowered by the M. & C. R. R. about the year 1870, when the bridge was first rebuilt

Rebuttal.

Q. Now, these were the rates on the ferry, the rates of toll charged by the ferrymen?

A. Yes.

Q. And that were used before the bridge was rebuilt and put in operation?

A. Yes; about the first year that the bridge was rebuilt.

Q. Then the ferry rates that you were talking about being reduced and established were the rates at Bainbridge and not at Florence

at all. Did they have a ferry-boat at Florence after they built the bridge?

A. No.

Q. Now, is it not a fact that the rates of toll that were fixed by the Memphis and Charleston over the bridge are less than the rates of toll at Florence, at the ferry?

A. Yes; that is why the *the* rates were reduced at Bainbridge. The people crossing the bridge at Bainbridge and Florence wanted the tolls lowered so as to correspond, as far as possible, with the tolls charged by the Memphis and Charleston for crossing the bridge.

(Signed) H. T. MORRISON.

132 *Deposition of G. W. Brabson.*

Said G. W. BRABSON, being duly sworn to speak the truth, doth depose and say as follows:

Q. What is your name and age, and where do you reside?

A. G. W. Brabson; age 42; I reside at South Florence.

Q. Are you connected in any way with the bridge across the Tennessee river at Florence, Alabama?

A. Yes; I am an employee.

Q. How long have you been employed, and in what capacity?

A. I am the regular draw-tender, and toll-keeper in the absence of the regular toll-keeper.

Q. In what other capacity and for how long have you been in the employ of the bridge?

A. I took toll on the bridge 10 years ago as extra man.

Q. State how long you have been acquainted with the rates of tolls on the Florence bridge.

A. Ten (10) years.

Q. State what the toll is and has been for the last ten years for mules, horses, and cattle in droves, per head.

A. 10 cents.

Q. For a person?

A. 10 cents.

Q. A man and horse?

A. 20 cents.

Q. One-horse buggy, cart, or dray?

A. 30 cents.

Q. Two-horse carriage or buggy?

A. 50 cents.

Q. Two-horse carriage with the capacity of six persons?

A. 70c.

Q. 2-horse carriage, four seats, capacity of 8 persons?

A. 80c.

Q. 2-horse wagon or ox wagon?

A. 60c.

Q. 4-horse or ox wagon?

A. 75c.

Q. 6-horse or ox wagon?
A. $1.00.
Q. Special school children tickets?
A. 04c.
Q. State whether or not you are acquainted with the rates of ferr-age at the ferry-s above and below Florence, on the Tennessee river?
A. I am acquainted with the rates of ferriage at the ferry-s above and below Florence, on the Tennessee river—Bainbridge, 7
133 miles above, and Prides Landing, 13 miles below, the Florence bridge.
Q. What are they and how do you know it?
A. The rates at Lambs and Bainbridge are the same—25c. for a footman; mules, horses, and cattle, each, 25c.; one man and horse, 50c.; 75c. for a one-horse buggy or a one-horse vehicle of any character; $1.00 for a 2-horse buggy or carriage; $1.00 for a 2-horse wagon; $1.50 for a four-horse wagon. The rates at Prides Landing are exactly the same, with the exception as to single buggies. At Prides it is only 50c., while at the others it is 75c.
Q. How wide is the river at Florence?
A. 705 yards wide.
Q. What is the width at the several ferries you have mentioned?
A. At Bainbridge it is half a mile wide; at Prides it is not so wide as at Florence, about 500 yards; at Lambs Ferry it is wider than it is at Florence, about 800 yards, I should say. I have never measured the difference; am only stating it from my best judgment and knowledge of the width of the river at each of these places.

Cross-examination of G. W. BRABSON:

Q. Is it wider at Lambs than it is at Florence?
A. Yes, a little wider.
Q. And narrower at Bainbridge?
A. Yes.
Q. And how long have you been in the employ of the company?
A. Ten years.
Q. What is the toll on turkeys?
A. They don't charge anything for turkeys now.
Q. Has there been any reduction in the rates of tolls since you have been working for the company?
A. No.
Q. You know nothing about what the Florence Bridge Co. charged?
A. No; only what I have heard; I have no personal knowledge.
(Signed) G. W. BRABSON.

134 *Deposition of T. C. Walker.*

Said T. C. WALKER, being duly sworn, doth depose and say as follows:

My name is T. C. Walker; was born in 1824, and am 72 years old; reside in Tuscumbia, Alabama, and was raised there; have

lived in Florence 27 years, but always considered Tuscumbia my home. I remember when the present bridge belonging to the Memphis & Charleston railroad was constructed across the Tennessee river at Florence; this was about 1852, I think; and that the bridge of the Florence Company was constructed about ten (10) years previous. I am acquainted with the rate of ferriage charged for the toll by the ferry at Florence across the Tennessee river when the Florence Bridge Company constructed its bridge. I am acquainted with the rate of tolls charged by the Florence Bridge Company for ferry after its bridge was constructed and in operation. My op-ortunity for knowing these rates of tolls is that I crossed there very frequently, having business in Florence and in Tuscumbia, and my business called me from one point to the other very often. I am acquainted with the rate of toll charged by the receivers of the Memphis & Charleston R. R. Co. for crossing the public bridge belonging to the railroad company at Florence. The rate of toll now charged by the receivers of the Memphis & Charleston R. R. Company at this point for crossing its bridge is less than the Florence Bridge Co. charged for the same service before it sold out to the M. & C.

The Memphis and Charleston Railroad Company, with the exception of a short time during the war, have been operating this bridge ever since the purchase of it, some time in 1852, from the Florence Bridge Co. There was a span of it blown down during the war, and until it was rebuilt a ferry-boat was used in crossing. This was during the war, and continued for several months, until the span of the bridge was replaced.

The rate of tolls for crossing this bridge were as follows: For hogs and sheep, per head, $ .04; for horses, mules, and cattle in
135 droves, each, .10; for one person, .10; one man and horse, .20; one horse and buggy, cart, or dray, .30; two-horse carriage or buggy, .50; two-horse carriage, capacity of six persons, .70; two-horse or ox wagon, 60; four-horse or ox wagon, 75; six-horse or ox wagon, —. The rates of toll for crossing the ferry at the same place across the Tennessee river, when the Florence Bridge Co. was incorporated and the bridge was built, are as follows: Horses, mules, and cattle in droves, each (don't remember); for a person, 25c.; one man and horse, 40c.; one horse and buggy, cart, or dray, 50c.; two-horse carriage or wagon, $1.00; two-horse carriage, capacity of six persons, not less than $1.00; 2-horse or ox wagon, 60c.; 4-horse or ox wagon, $1.00; 6-horse or ox wagon, not less than $1.00. I do not remember the rate for children going to school. The rate for horses, mules, and cattle in droves, each, was not less than 10c., though the witness does not remember exactly what it was.

Q. Are you acquainted with the toll charged by the Florence Bridge Company?

A. I think they were more than those charged by the Memphis & Charleston Railroad Co.

I am acquainted with the rate of tolls charged by the Florence Bridge Company, and which were in force at the time the Memphis & Charleston acquired the bridge before the war, and that the pres-

ent rate of toll does not in any respect exceed the rate of toll charged by the Florence Bridge Company. I came to Tuscumbia, Ala., in 1825, and have lived there and at Florence continuously since that time, except from 1851 to 1859, and was there every summer during that period. Have been engaged all the time in the livery business or in farming, and have during said time passed back and forth over the Tennessee river by the ferry when it was in operation, afterward by the bridge of the Florence Bridge Company, and since by the bridge of the Memphis & Charleston Railroad Co. Have been in the livery business both at Florence and Tuscumbia.

136 Q. Do you know the rate of tolls for crossing the Tennessee river at the ferry-s above and below this bridge at a distance of, say, about 40 miles?

(Defendants object to this question because it is incompetent and irrelevant and does not pertain to the question at issue.)

A. Bainbridge is six (6) or seven (7) miles, and I have paid $1.00 for crossing in a two-horse buggy. Prides Ferry is about seven miles below, and Lambs Ferry about 24 miles above, and I have paid the same price at both places. At all the ferry-s the rate of tolls is much higher than across the bridge.

Cross-examination of T. C. WALKER:

Q. When did you make this affidavit?
A. Some time last year.

(The affidavit referred to is hereby made a part of the deposition of this witness.)

STATE OF ALABAMA, }
Colbert County. }

Before me, W. P. Challen, notary public for said county, this day personally appeared Thomas C. Walker, who, being first duly sworn, says that he is acquainted with the present rates of toll over the Florence bridge, in said county, and that said rates of toll are as follows: Horses, mules, or cattle in droves, each, 10c.; one person, 10c.; one man and horse, 20c.; one-horse cart, dray, or buggy, 30c.; two-horse carriage or buggy, 50c.; two-horse carriage, capacity 6 persons, 70c.; two-horse or ox wagon, 60c.; four-horse or ox wagon, 75c.; six-horse or ox wagon, $1.00; special school tickets, 04c. Affiant says that he is acquainted with the rates of toll charged by the Florence Bridge Company, and which were in force at the time the Memphis & Charleston railroad acquired said bridge in 1850, and that said present rates of toll do not in any respect exceed the rates of toll charged by said Florence Bridge Company. Affiant further states that he came to Tuscumbia, Ala., in 1825, when he was an

137 infant, and has lived there and at Florence, Ala., continuously since that time, *since* except from 1851 to 1859, and was here every summer during that period; have been engaged all the while

either in the livery business or in farming, and have during said time passed back and forth over Tennessee River bridge between Florence and Tuscumbia very frequently, having been in livery business in Florence and Tuscumbia both. I am now in my 71st year.

T. C. WALKER.

Sworn to and subscribed before me this 4th day of March, 1895.

W. P. CHALLEN,
Notary Public.

Q. The question- that you have been answering as asked by Mr. Humes?

A. I knew pretty well what they were.

Q. You say you moved to Tuscumbia in 1825?

A. Yes.

Q. And have lived there ever since?

A. Yes, with the exception of a short while at Florence and Mississippi, but was up there every summer.

Q. Mr. Walker, do you remember now the rate of toll charged by the ferry?

A. Yes, I knew what they charged.

Q. Do you know of your own knowledge what it was as to footman?

A. Well, I never walked over.

Q. Then you do not know of your own knowledge?

A. No.

Q. Do you know of your own knowledge what was the rate per head for horses and cattle in droves?

A. No. I never took any over myself, but have seen droves go over.

Q. Do you know what charges they paid?

A. I think it was 10c. per head.

Q. Did you see them pay the toll?

A. No, but I was positive it was paid.

Q. Well, then, all you know is what you have heard people say?

A. Yes.

138 Q. Did you ever carry a horse and buggy over?

A. Yes; I paid fifty cents for it.

Q. Did you ever carry a two-horse wagon or buggy over?

A. Yes; and paid one dollar for it.

Q. Now, then, Mr. Walker, you say you were acquainted with the rates of toll charged by the Florence Bridge Co., as was asked you by Mr. Humes; you said that you knew about this because you passed over the bridge; do you know what this bridge company charged for cattle in droves, per head, horses, and mules?

A. I never drove any over. No, sir; I don't know.

Q. Did you ever drive any hogs over, or do you know just from hearsay?

A. They had a price-list stuck up on the approach leading to the bridge.

Q. Do you recollect what that was?
A. No, I do not. I know that the charges were less on the Memphis & Charleston.
Q. Do you know what the charges were for school children?
A. No, sir.
Q. Do you know when it changed hands?
A. Yes.
Q. Into whose hands did it go?
A. My understanding was, into the hands of the Memphis & Charleston.
Q. Do you know the rate charged by the receivers, over the bridge, for foot passengers?
A. Yes; ten cents.
Q. Did you not state awhile ago in your answer that it was less?
A. If I did I did not intend to.
Q. Did you ever walk over this bridge?
A. No, sir; I never walked over it, but I have seen persons pay ten cents per head.
Q. Do you know what the charge is for carrying over a drove of cattle, horses, mules, etc., *is* per head?
A. Well, I can only state what a man told me he paid. I never carried any over.
Q. You say that the charges now by the receivers of the M. & C. R. R. are less than those charged by the Florence Bridge Company?
A. Yes.
Q. And less than those charged by the ferry?
A. Yes.

T. C. WALKER.

139 *Deposition of W. H. Gilliam.*

Said W. H. GILLIAM, being duly sworn to speak the truth, doth depose and say as follows:

Q. What is your name and age and where do you reside?
A. W. H. Gilliam; am forty-nine years old, and live at Tuscumbia, and — been living there twelve years.
Q. State whether or not there was a writ of injunction served upon you.
A. There was a writ of injunction served upon me in 1895, which enjoined me from further proceeding against the Memphis & Charleston R. R. Co. pertaining to the suit pending against them for overcharge of toll on the bridge across the Tennessee river, known as the Florence bridge, now operated by the receivers of the Memphis & Charleston R. R.
Q. State whether or not you passed over the said bridge, and what was done and said there.
A. On the 29th day of March, 1895, I had valid reasons for going to Florence on business, and rode up on the approach to the bridge and tendered Mr. McKinney the amount of the fare prescribed by the last legislature. He refused to receive it, and demanded of me

twenty cents for me and my horse, which would necessitate my paying forty cents to cross and recross. Only having on my person twenty-five cents at the time; I was forced to leave my horse on the south bank and walk to the L. & N. depot at Florence, for which they required that I pay ten cents each way, which I paid under protest.

Q. Have you actually instituted proceedings under the statute against the receivers of the M. & C. or any employee of the road?

A. No; I threatened to do so and was enjoined.

Q. You are one of the parties defendant to this bill?

A. Yes, sir; I am.

W. H. GILLIAM.

THE UNITED STATES OF AMERICA,
Northern District of Alabama, Northern Division.

140 I, Ed. E. Greenleaf, a commissioner of the circuit court of the United States in and for the said district, duly appointed, qualified, and as such, as aforesaid, do hereby certify that the depositions hereinbefore set forth were sworn to before me and subscribed by the witnesses after their testimony had been written down by a stenographer, as agreed by counsel; and I do further certify that I am not of counsel nor attorney for either of the parties mentioned in the suit in controversy or in any way interested in the result of said suit.

In testimony whereof I hereunto set my hand and seal, [SEAL.] at Huntsville, in said division and district, this the 23rd day of April, 1896.

ED. E. GREENLEAF,
U. S. Commissioner and Examiner in Equity.

Agreement to Take Depositions Orally.

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

CHARLES M. MCGHEE and HENRY FINK, as Receivers of the Memphis & Charleston Railroad Company, and The Memphis & Charleston Railroad Company, Complainants,
vs.
WILLIAM C. OATES, as Governor of the State of Alabama; William C. Fitts, as Attorney General of the State of Alabama; William H. Gilliam, and A. H. Carmichael, as Solicitor, etc., Defendants.
No. 213. Equity.

In the above-entitled cause it is hereby agreed that the depositions of the following-named persons, witnesses for the complainant, to wit, Isaac Price, A. D. Coffee, and S. D. Weakley, who reside at Florence, Alabama, and Matthew Lambert, who resides at South

Florence, Alabama, and George S. Henderson, who resides at Tuscumbia, Alabama, may be taken on oral examination, at Florence and Tuscumbia, on the 16th and 17th days of April, 1896. It is further agreed that Turner Porterfield, Esq., who resides at Tuscumbia, Ala., shall act as commissioner in taking the depositions, and that a commission for this purpose shall issue to him.

HUMES, SHEFFEY & SPEAKE,
Sol'rs for Complainants.

ISAAC ORME,
Att'y for W. H. Gilliam.

141 In the Circuit Court of the United States for the Northern District of Alabama, Northern Division.

The President of the United States of America to Turner Porterfield, Esq., Greeting:

Know ye that, in confidence of your prudence, fidelity, and competency, you have been appointed commissioner, and by these presents you are invested with full power and authority to call before you and examine George S. Henderson, S. D. Weakley, Isaac Price, A. D. Coffee, Mathew Lambert, on oral examination, as witnesses in behalf of the complainant in a cause pending in the circuit court of the United States for said division of said district, wherein C. M. McGhee and Henry Fink, as receivers of the M. & C. R. R., and M. & C. R. Co. are plaintiffs and William C. Oates, as governor, and W. C. Fitts, as attorney general, of the State of Alabama, and others are defendants, on oath, to be by you administered, on oral examination; to take and certify the depositions of the witnesses and return the same to said court, to be holden in the city of Huntsville, in said division of said district, on the instanter, under your hand and seal.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said court, at [SEAL.] the city of Huntsville, in said division of said district, this 15th day of April, 1896.

Issued April 15th, 1896.

N. W. TRIMBLE, *Clerk.*

Deposition of Isaac Price.

ISAAC PRICE, being first duly sworn to speak the truth, the whole truth, and nothing but the truth, deposes and says as follows:

Examination-in-chief by Mr. SHEFFEY:

Q. State your age, please.

A. I was 73 years old the 5th day of last July.

Q. How long have you resided in Florence and vicinity?

142 A. My father moved to within two miles of Florence when I was two years old, and have been living here ever since. Was only away a short time.

Q. Were you acquainted with the old Florence Bridge Company that had its bridge where the present bridge is?

A. Yes; I saw it built.

Q. Did you ever act as toll-keeper for the Florence Bridge Company?

A. Yes, sir; in my brother's place.

Q. Do you know the rates of toll that were charged by the Florence Bridge Company?

A. Yes.

Q. State what they charged for one person to go over.

A. Ten cents.

Q. State what they charged for man and horse.

A. Twenty-five cents.

Q. State what they charged for horse and buggy.

A. Fifty cents.

Q. State what they charged for two-horse carriage or buggy.

A. Seventy-five cents.

Q. State what they charged for two-horse carriage with capacity of six persons.

A. I think it was $1.25.

Q. State what they charged for two-horse or ox wagon.

A. $1.25, I think.

Q. State what they charged for four-horse or ox wagon.

A. $1.25.

Q. State what they charged for six-horse wagon.

A. $1.50.

Q. Did they have any special school tickets at that time?

A. I do not recollect that.

Q. Was it ten cents for horses and cattle and mules, in droves?

A. Yes, ten cents per head.

Q. What year were these rates of toll charged on the Florence bridge?

A. That was in 1846.

Q. Did those rates of toll continue as long as you knew the bridge was operated?

A. Yes, sir.

Q. Do you know what the present rates of toll are, over the Memphis and Charleston railroad bridge?

A. I do not.

Defendants object to the above questions and answers generally because they are incompetent, illegal, and irrelevant, because the rates of toll charged by the old ferry and the Florence Bridge
143 Company have nothing to do with the rates of toll charged by the Memphis & Charleston Railroad Company or the receivers thereof and because the legislature has a right to reduce said rates.

ISAAC PRICE.

Deposition of A. D. Coffee.

A. D. COFFEE, being first duly sworn to speak the truth, the whole truth, and nothing but the truth, deposes and says as follows:

Examination-in-chief by Mr. SHEFFEY:

Q. State your residence and age.

A. I will soon be seventy-five years of age, and live three miles below Florence, on the river, opposite Sheffield.

Q. How long have you been residing in the vicinity of Florence?

A. I was born and raised within three miles of Florence.

Q. Do you remember when the ferry was operated where the present Memphis & Charleston Railroad Company's bridge across the Tennessee river now stands?

A. Yes, sir; it belonged to Judge McKinley, A. D. Hunt, and others. My family took twenty-five hundred dollars of stock in the old bridge.

Q. Do you remember when the Florence bridge was built by the Florence Bridge Company?

A. Yes; I recollect it, but could not give you the exact years.

Q. You remember when it was in operation, do you not?

A. Yes, sir.

Q. Did you cross at the ferry when that was in operation?

A. Yes, sir; but not often.

Q. Did you cross the Florence bridge often after it was built?

A. No; not often, just a few times a year.

Q. How did the rates of toll charged by the Florence Bridge Company compare with the rates of toll charged by the ferry?

A. I could not tell positively but my impression is that after the bridge was built the rates were reduced. The ferry charged more than the bridge.

144 Q. Did you gather that from crossing and general information?

A. Yes, sir.

Q. Can you recall what the present rates of toll on the bridge are?

A. No, sir; I could not tell exactly.

Q. Is the fare that you pay now less or greater than the fare that you paid on the Florence bridge?

A. I do not think it is any greater, but cannot say that it is any less.

Q. Can you recall when the Memphis & Charleston Railroad Company acquired the old Florence Bridge Company's rights and privileges?

A. Yes; I believe it was in the early 50's.

Q. Were you or your family stockholders in the old Florence Bridge Company?

A. Yes, sir.

Q. State whether or not the Memphis & Charleston Railroad Company bought the Florence bridge and its rights from the Florence Bridge Company.

A. Yes, sir; they did.

Q. Has the Memphis & Charleston Railroad Company been operating and controlling that bridge ever since?

A. Yes; except during the war.

Q. Was the bridge partially destroyed during the war and rebuilt afterwards by the Memphis & Charleston Railroad Company?

A. Yes.

Q. I understand you to say that your recollection from having crossed over the ferry and over the bridge as operated by the Florence Bridge Company is that the rates of toll were higher than the rates charged by the Memphis & Charleston Railroad Company?

A. Yes.

The defendant objects to the above questions and answers generally, because they are incompetent, irrelevant, and illegal, and because the rate of toll charged by the ferry and the Florence Bridge Company has nothing to do with the rates of toll charged by the Memphis & Charleston Railroad Company or its receivers, and because the legislature has a right to reduce the rates of toll over the said bridge.

Cross-examination of A. D. COFFEE.

By Mr. ORME:

145 Q. Was the old ferry run by a company or by individuals?

A. There were several owners, but whether it was a company I could not tell, but am inclined to think it was not a company. Judge McKinley, Willis Pope, and A. D. Hunt were some of the owners; do not know whether there were others or not.

Q. Was the Florence bridge owned by a company?

A. Yes; it was operated and controlled under a charter.

Q. The Memphis & Charleston Railroad Company, now controlling it by its receivers, is another and distinct company, is it not?

A. Yes; I suppose so.

Q. Do you state that you know the rate of toll charged by the ferry company; if so, what was it for a man?

A. I could not tell you any of the items, but my recollection is that the rates were lower after the bridge was built.

Q. Do you know what rates were charged by the Florence Bridge Co.?

A. No; I do not.

Q. Do you know the rates charged now?

A. No.

Q. You really do not know of your own knowledge that the rates of toll now charged by the receivers of the Memphis & Charleston Railroad Company are less than those charged by the ferry or the old Florence Bridge Company?

A. My impression is that they are less than the old ferry charges, but I do not recollect whether there is any difference between the old Florence Bridge Company's charges and the Memphis & Charleston Railroad Company's charges.

Q. You stated that your family were stockholders of the bridge?
A. Yes, sir; my mother and brother-in-law had stock in it.
Q. Who looked after your mother's stock in that company?
A. Judge Weakley, one of my father's executors.
Q. You stated to Mr. Sheffey that the old Florence Bridge Company sold its rights, franchises, and privileges to the Memphis & Charleston Railroad Company?
A. Yes, sir.
146 Q. Do you know what the Memphis & Charleston Railroad Company paid the old Florence Bridge Company for their rights?
A. I could not say positively; my impression is that the stockholders got very little; they were so anxious to get the railroad that they merged their rights in the bridge at a very small cost.
Q. Do you know about the amount they received?
A. I do not.
Q. Do you know what that bridge cost the old Florence Bridge Company to construct?
A. I do not.

Rebuttal Testimony of A. D. Coffee.

By Mr. SHEFFEY:

Q. Do you or not get the impression of the comparative rates of toll that you have testified about over the ferry, the Florence Bridge Company's bridge, and the bridge now operated by the Memphis & Charleston Railroad Company and its receivers from having crossed and having paid toll to the ferry, the Florence Bridge Company, and the Memphis & Charleston Railroad Company and its receivers?
A. Yes; I do.

A. D. COFFEE.

Testimony of S. D. Weakley.

S. D. WEAKLEY, first being duly sworn to speak the truth, the whole truth, and nothing but the truth, deposes and says as follows:

Examination-in-chief by Mr. SHEFFEY:

Q. How long have you lived in Florence, and what is your age?
A. I located here in 1831. I am 83 years of age.
Q. Have you lived here continuously?
A. Yes; pretty much all the time.
Q. Was there a ferry in operation in 1831 where the bridge across the Tennessee river is now located?
A. Yes; it was owned by John McKinley and some other parties.
Q. State whether or not you were acquainted with the Florence Bridge Company.
A. Yes; it sprung up about 1840.
Q. Did the Florence Bridge Company operate a toll-bridge where the present one is across the Tennessee river?

147 A. Yes; they operated a toll-bridge until it was blown down, about 1854 or 1855. The bridge was finished about 1840.

Q. Were you acquainted with the rates of toll over the ferry and the bridge?

A. I suppose I was.

Q. Are you acquainted with the present rates of toll over the Memphis & Charleston Railroad Company's bridge?

A. The rates of toll now are considerably less than the charges made by the Florence Bridge Company.

Q. State whether or not you had during the time the bridge was operated by the Florence Bridge Company occasion to pass and repass over the bridge and pay toll.

A. Yes. I think the charges for man and horse were 25c.

Q. What was it for a man?

A. I do not remember.

Q. Was not less than 10c., was it?

A. No.

Q. Were the ferry rates of toll greater than now charged by the Memphis & Charleston Railroad Company and its receivers?

A. Yes; I think so. I think they were reduced from time to time by the Memphis & Charleston Railroad Company.

Q. What time did the Memphis & Charleston Railroad Company acquire the bridge of the Florence Bridge Company, with its rights and privileges?

A. I think about 1855 or 1856.

Q. How did they buy it?

A. They bought it from the stockholders—James Irvin, Martin Hawkins, James H. Weakley, and others; was one of the stockholders myself.

Q. At the time the Memphis & Charleston Railroad Company acquired this bridge was the bridge in operation, or were only the piers of the bridge standing?

A. The piers were standing; the superstructure had blown away. Additional piers were put in by the Memphis & Charleston Railroad Company.

Q. The Memphis & Charleston railroad then built a toll-bridge and railroad bridge combined?

148 —. Yes. They paid for the bridge to the owners of the bridge company stock of the Memphis & Charleston Railroad Company, some $40,000 or $50,000.

Q. The Memphis & Charleston Railroad Company has been operating that bridge as a toll-bridge ever since 1855 or 1856, has it not?

A. Yes.

Q. Was it burned during the war?

A. Yes, sir.

Q. It has been built since the war and put in operation?

A. Yes, sir.

Q. When the Florence Bridge Company operated the bridge was there or not a great deal of travel over it?

A. Yes, sir.
Q. Was there much more than there is now?
A. Yes; it was a great thoroughfare from north to south.

The defendant objects to the above questions and answers generally because incompetent, irrelevant, and illegal, and because the rate of toll charged by the ferry and the Florence Bridge Company has nothing to do with the rates of toll now charged by the Memphis & Charleston Railroad Company, and because the legislature has a right to prescribe the rate of toll charged by said railroad company or the receivers thereof.

Cross-examination of S. D. WEAKLEY.

By Mr. ORME:

Q. Do you remember the rates of toll charged by the old ferry or the Florence Bridge Company?
A. I think it was 25c. for a man and horse. That is my recollection of it. It may have been greater. My recollection is that the railroad company reduced the rates of tolls from time to time in the interest of the traveling community.
Q. Do you remember the rates of toll charged by the Memphis & Charleston Railroad Company or the receivers thereof?
A. I do not.
Q. You state you were a stockholder of the Florence Bridge Company. Do you know what the bridge company sold their franchise and rights for?
A. I could not state positively. They bought all the privileges and paid for them in stock.
Q. How do you know what rates of toll were charged by the old Florence Bridge Company?
149 —. The rates of toll were established by the legislature when the Florence Bridge Company built the bridge. There was a horse-boat run there for many years.
Q. There was a steam ferry there afterwards, was there not?
A. Yes.
Q. Were the rates of toll charged by the steam ferry the same as charged all the time?
A. Yes.

Rebuttal Testimony of S. D. Weakley.

Q. You had occasion to pass and repass, and paid toll, did you not?
A. Yes, sir.

S. D. WEAKLEY.

Testimony of Matthew Lambert.

MATHEW LAMBERT, being first duly sworn to speak the truth, the whole truth, and nothing but the truth, deposes and says as follows:

Examination-in-chief by Mr. SHEFFEY:

Q. State your age, where you reside, and how long you have resided there.

A. I was born in 1833. I reside at South Florence, and have resided there since 1856, except three years during the war.

Q. State whether or not you helped to build the first railroad and toll-bridge over the Tennessee river at Florence, Alabama.

A. Yes; I helped put in the piers for the first bridge.

Q. State whether or not, at the time you were at work on said bridge, there was anything remaining of the old bridge, such as old piers, where *where* the present bridge now stands?

A. Yes, sir; the piers of the Florence Bridge Company were there.

Q. About what year was it that you helped build the first railroad bridge?

A. About 1858.

Q. During the time and prior to the time you helped to build the first railroad and toll-bridge, was there a ferry being operated at that point from Florence to the Sheffield side of the river?

A. Yes, sir.

Q. Were you acquainted with the rates of ferriage charged by said ferry?

A. My best recollection about that is, that the horse-boat charged footmen ten cents at that time, and I think it was 50c. for a horse and buggy.

150 Q. What did they charge for man and horse?

A. I think it was 25c.

Q. What did they charge for two-horse carriage or buggy?

A. I think it was 75c. or $1.00; I am not sure which.

Q. What did they charge for two-horse carriage or ox wagon?

A. $1.00.

Q. What did they charge for four-horse carriage or ox wagon?

A. I think it was a dollar and a quarter.

Q. What did they charge for a six-horse carriage or wagon?

A. I think it was two dollars.

Q. Do you recollect whether they had any school tickets?

A. Not on the ferry; they did on the railroad bridge.

Q. State whether or not you ever operated a ferry at Florence.

A. Yes; I was a partner in the latter part of 1865 and 1866.

Q. How came you to be operating the ferry?

A. It was leased out and we rented it. The bridge was not in operation; it had been burned down during the war—about 1861.

Q. And before the bridge was rebuilt you and Morrison leased the ferry at Florence where the bridge now stands and operated it?

A. Yes.

Q. State the rates of toll you charged at that ferry?

A. We charged 25c. for footmen and 10c. for loose cattle; man and horse, 50c.; horse and buggy, 75c.; two-horse wagon, $1.00; two-horse carriage, with capacity of six persons, $1.00; two-horse carriage or ox wagon, $1.00; four horse or ox wagon, $1.25; six-horse wagon, $2.00. I did not collect the toll myself; a man by the name of White collected it. The commissioners' court fixed the rates of toll.

Q. State whether or not the rates of toll that you have just named in your preceeding answer were the rates of toll fixed for that ferry by the commissioners' court.

A. Yes, sir.

Q. State whether or not the rates of toll charged by the ferry at Florence, which was operated just prior to the building of the railroad bridge on the old piers of the Florence Bridge Company, and the rates of ferriage that were charged by you when you
151 operated the said ferry in 1865 and 1866 were the same or less than the present rates of toll now charged by the Memphis & Charleston Railroad Company and its receivers.

A. They were more.

Q. State whether or not you cross over the present bridge to Florence.

A. Sometimes I do.

Q. Have you paid toll for going over there?

A. Yes, sir.

Q. Are you acquainted with the rates of toll?

A. Yes, sir.

Q. You state that the rates of toll over the present bridge are less than the rates of toll charged by the ferry?

A. Yes, sir.

Defendants object to the above questions and answers generally, because they are irrelevant, illegal, and incompetent, and because the rates of toll charged by the old ferry and the Florence Bridge Company have nothing to do with the rates now charged by the receivers of the Memphis & Charleston Railroad Company, and because the legislature of the State of Alabama has a right to prescribe the rate of toll to be charged by said Memphis & Charleston Railroad Company or its receivers.

Cross-examination of MATTHEW LAMBERT:

By Mr. ORME:

Q. You stated to Mr. Sheffey that you helped to build the railroad and toll bridge. Were you a contractor or were you employed by the Memphis & Charleston Railroad Company?

A. I was not employed by the railroad company; was employed by the Howe Bridge Company, the contractors, to build the bridge.

Q. Was the ferry run there continuously during the time the Florence bridge was blown away?

A. Yes, sir. The old Florence Bridge Company, after the first

bridge was blown away, put a horse-boat in there and afterwards run a steam ferry until the first railroad bridge was built.

Q. When did they cease running that ferry?

A. When the bridge was finished.

Q. How much of the old Florence bridge was left standing at the time they sold it to the Memphis & Charleston Railroad Company?

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A. The piers that the old bridge stood on.

Q. Were they sound and solid?

A. They were never put up very solid.

Q. Do you know anything about a special school rate over the bridge at any time?

A. No, sir.

Rebuttal Testimony of Matthew Lambert.

Q. Do you know the rates now charged by the receivers of the Memphis & Charleston Railroad Company?

A. Yes; it is 10c. for footmen, 20c. for man and horse, 30c. for horse and buggy, 60c. for two-horse carriage, and if it contains over four persons they charge 10c. extra for each passenger.

Q. Did you ever collect toll on the Memphis & Charleston Railroad Company's toll-bridge?

A. No, sir.

MATTHEW LAMBERT.

Testimony of Geo. S. Henderson.

GEORGE S. HENDERSON, first being duly sworn to speak the truth, the whole truth, and nothing but the truth, deposes and says as follows:

Examination-in-chief by Mr. SHEFFEY:

Q. Mr. Henderson, state your age and place of residence.

A. I will be seventy-five years of age in August, and reside in Colbert county, Alabama.

Q. Were you acquainted with the old Florence bridge, which was operated by the Florence Bridge Company?

A. Yes; knew the officers of the company.

Q. Where did you live at the time?

A. At Southport, or South Florence, as it is known now, in old Franklin county at that time, Colbert county now.

Q. Do you know when the Memphis & Charleston Railroad Company acquired the old Florence bridge and who they acquired it from?

A. It was about 1858.

Q. State how the Memphis & Charleston Railroad Company acquired the bridge and its rights.

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A. The citizens of Florence were the stockholders and owners of that bridge company, and they agreed with the Memphis & Charleston Railroad Company to build the five miles

of branch road to Tuscumbia and the bridge over the Tennessee river, and when completed to turn the branch road and bridge over to the Memphis & Charleston Railroad Company, and the stockholders of the said Florence Bridge Company were to receive stock in lieu of the bridge and the rights and franchises of the bridge company.

Q. By this means, then, the Memphis & Charleston Railroad Company purchased from the stockholders of the Florence Bridge Company the Florence bridge and all its rights and privileges, did they?

A. Yes.

Q. State how you know that the Memphis & Charleston Railroad Company purchased the Florence Bridge Company's rights and privileges and paid for them in stock of the Memphis & Charleston Railroad Co.

A. By being a contractor and contracting to build the bridge and taking stock on part payment.

Q. What stock?

A. The Memphis & Charleston Railroad Company's stock.

Q. Was there a bridge there at the time you contracted to build a bridge?

A. All that remained was the piers. The superstructure had blown away.

Q. Those were the piers of the bridge of the old Florence Bridge Company, were they not?

A. Yes, sir.

Q. Who employed you to build the bridge masonry?

A. The Memphis & Charleston Railroad Company.

Q. State who represented the Florence Bridge Company in seeing that said bridge was constructed.

A. R. M. Patton.

Q. State how the bridge was built.

A. The bridge was built under the supervision of the Memphis & Charleston Railroad Company. The engineer for the railroad was George H. Arms, and R. M. Patton for the Florence Bridge Company.

Q. Did or not the engineers make estimates for you and you get your pay through Mr. Patton?

154 A. All the money we got we had to get the engineers' report and receive authority from R. M. Patton and drew the money.

Q. Mr. Henderson, what kind of a bridge was built? Was it a toll-bridge and a railroad bridge?

A. Yes; just as you see it now.

Q. Have you lived in this county continuously since 1858?

A. No; not continuously; was away about seven years during the war; with this exception, have lived here continuously.

Q. Has or not the Memphis & Charleston Railroad Company been in operation, possession, and control of said bridge ever since 1858?

A. Yes, sir.

Q. State whether or not at the time you built the bridge for the

Memphis & Charleston Railroad Company, in 1858, there was a ferry in operation there.

A. There was.

Q. While you were building said bridge were people crossing constantly over the ferry?

A. Yes, sir; going all the time.

Q. State whether or not, from your best recollection, the rates of toll at that time over that ferry were higher than those charged by the Memphis & Charleston Railroad Company and its receivers.

A. From my best recollection, they are the same now as charged by the ferry.

Q. You are acquainted with the present rate of toll, are you not?

A. Yes.

Q. State whether those rates of toll are higher than the rates of toll charged by the ferry, which was operated when you built the bridge in 1858.

A. Not to my knowledge.

Q. State if it is not true, according to your best recollection, that the rates of toll now charged are the same as charged by the ferry.

A. Yes, sir; that is my recollection of it.

Cross-examination of GEO. S. HENDERSON.

By Mr. ORME:

Q. Mr. Henderson, you are in good health, are you not?

A. Reasonably so.

Q. Your recollection is pretty good?

A. Yes; in some things.

155 Q. Mr. Henderson, you recollect the ferry that was across the river at Florence?

A. Yes, sir. Old man Peck run a steam ferry.

Q. You remember the rates of toll charged by that ferry, do you?

A. Not absolutely. I never paid any toll for my own self on that ferry, as we had our own boats and did not need to cross. I crossed there before we contracted, but do not recollect what I paid.

Q. Do you remember about the Florence Bridge Company?

A. Yes.

Q. You were not a member of that old Florence Bridge Company, were you?

A. No, sir.

Q. Did you cross on that old bridge when you had to pay toll?

A. No.

Q. Do you recollect when the old Florence bridge stood there?

A. It was blown down before I saw that country. The piers were there.

Q. The fact is, then, you do not know what the ferry charged nor the rate of toll charged by the old Florence Bridge Company?

A. No.

Q. Did you ever know the rate of toll charged by the old Florence Bridge Company?

A. No.

Q. You told Mr. Sheffey that there was a contract between the old Florence Bridge Company and the Memphis & Charleston Railroad Co. to build a bridge and the five miles of branch road to Tuscumbia. Now, do you know what the contract between the Memphis & Charleston Railroad Company and the old Florence Bridge Company was, as to the amount that the Memphis & Charleston Railroad Company was to pay the old Florence Bridge Company to rebuild the bridge only?

A. No; I do not know.

Q. Do you know the estimate of the cost of building that bridge at Florence as it was then—in whatever time you built it?

A. I do not recollect. I think our masonry come to about $30,000, and the superstructure we had nothing to do with—it run up to something like $70,000; do not recollect what the whole bridge cost.

Q. Do you know whether or not the $70,000 (or whatever sum) was paid by the Memphis & Charleston Railroad Company
156 for the construction of that bridge and branch road?

A. The citizens of Florence and the stockholders of the old Florence Bridge Company agreed with the Memphis and Charleston Railroad Company to construct five miles of the branch road from Florence to Tuscumbia, including the bridge of the Florence Bridge Company and the franchises and privileges of the bridge company, and when completed to take stock of the Memphis and Charleston Railroad Company in the payment thereof. I do not recollect what proportion of the $70,000, if that much was paid for the bridge, was paid to the Florence Bridge Company.

Q. Do you know how much of the Memphis and Charleston Railroad Co.'s stock was given to the stockholders of the old Florence Bridge Co. and the citizens who operated in conjunction with that company?

A. No; I do not.

Q. You stated to Mr. Sheffey that you were acquainted with the rates of toll charged by the receivers of the railroad company. Are these rates higher than those charged by the old Florence Bridge Company?

A. I think they are the same.

Rebuttal:

Q. State whether or not you heard Mr. Patton, who was representing the Florence Bridge Company at the time you were constructing the railroad bridge or building the masonry-work, say that the Florence Bridge Company had sold and conveyed the bridge, with all the rights, franchises, and privileges thereof, to the Memphis and Charleston Railroad Company.

(Objected to by Mr. Orme because the conveyance is a matter of record and is the best evidence.)

A. Yes; I heard him and many of those influential men who were stockholders of the said company say that they had sold the bridge and ferry, with all the rights and privileges, to the Memphis & Charleston R. R. Co.

Q. State whether these statements were made at or about the time you were working on said bridge.

A. At the time.

(Signed) GEORGE S. HENDERSON.

157 I, Turner Potterfield, under and by virtue of a commission issued to me out of the circuit court of the United States in and for the northern division of the northern district of Alabama, in the cause of Chas. M. McGhee and Henry Fink, as receivers of the Memphis and Charleston Railroad Company, and The Memphis & Charleston Railroad Co. *vs.* William C. Oates, as governor of the State of Alabama, and others, do hereby certify that I caused to come before me at Florence, in Lauderdale county, State of Alabama, on the 17th day of April, 1896, the following-named witnesses: Isaac Price, A. D. Coffee, and S. D. Weakley, and caused to come before me at South Florence, in Colbert county, State of Alabama, Matthew Lambert, on the 17th day of April, 1896, and on the 16th day of April, 1896, caused to come before me at Tuscumbia, Colbert county, State of Alabama, George S. Henderson, all of whom are witnesses for the plaintiffs in the above-entitled cause, and that I have personal knowledge and identity of the said above-named witnesses; and each of the above-named witnesses, after being duly sworn to tell the truth, the whole truth, and nothing but the truth, *were* examined as hereinbefore sworn and *their* answers were reduced to writing as near as might be in their own language; whereupon each of the said witnesses subscri*ded their* names to the same in my presence; and I further certify that I am neither of counsel nor of kin to any of the parties to said cause nor in any manner interested in the result thereof.

Witness my hand and seal this the 20th day of April, 1896.

TURNER PORTERFIELD.

158 THE UNITED STATES OF AMERICA, }
Northern District of Alabama, Northern Division. }

Be it remembered that on this the 28th day of December, 1896, I, Ed. E. Greenleaf, a commissioner of the circuit court of the United States in and for said district and an examiner in equity, duly appointed and qualified as such, did, under and by virtue of the several acts of Congress authorizing and regulating the taking of depositions *de bene esse* in civil causes pending in the circuit and district courts of the United States, cause to come before me, at the office of O'Neal and Wood, at Florence, in the county of Lauderdale and State of Alabama, between the hours of nine o'clock a. m. and two o'clock p. m., the following nam*de* persons, to wit, William M. Jackson, Gen. S. D. Weakley, J. C. Conner, H. W. Sample, P. J. Bond, George P. Arthur, Alex. D. Coffey, and J. Overton Ewin, to be ex-

amined as witnesses in the cause pending in the circuit court of the United States for the northern division of the northern district of Alabama, wherein C. M. McGhee and Henry Fink, as receivers of the Memphis and Charleston Railroad Company, are plaintiffs and Wm. C. Oates, as governor of the State of Alabama, and others are defendants; and the said above-named witnesses, of lawful age, being by me cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, did each severally testify as follows:

Deposition of William H. Jackson.

Examination by W. J. WOOD, Esq.:

Q. Where were you born, and when?

A. I was born at what is known as the Forks of Cypress, on June 19th, 1824.

Q. Were you living at Florence in the year 1832?

A. I was living at Forks of Cypress, in Lauderdale county, about four and a half miles from Florence.

Q. What was the population of Florence in 1832?

A. I cannot say.

Q. About how many do you think?

A. There was said to be about one thousand.

159 Q. Was this prior to 1840?

A. It was about 1832.

Q. Have you examined this book (U. S. census returns, showing census by counties, etc.)?

A. Yes, sir.

(Complainant objects to the question and to the answer thereof on the ground that it is illegal, irrelevant, and inadmissable.)

Q. Can you give the population of Lauderdale county and Colbert county at that time without reference to the census report?

A. I cannot.

Q. State about what was the population of Lauderdale county from 1830 to 1840.

A. I have no idea except from the census report.

(Complainant objects to question and answer for grounds stated above.)

Q. What do you say the population was, according to the best evidence?

A. I do not know without reference to the census report. (After reference to the census report:) It is given as 11,781.

(Complainant objects to the question and to the answer thereto on the grounds stated above and on further grounds that it is not the best evidence.)

Q. What is the population of Lauderdale county now?

A. (After reference to the census report.) It is stated to be 23,739.

(Complainant objects to question and answer thereto stated on grounds stated above.)

Q. What was the population of Franklin county in 1830?
A. (After reference to the census report.) Stated to be 11,078 at that time.

(Complainant objects to question and answer on same grounds mentioned.)

Q. Were Franklin and Colbert counties all one county at that time?
A. Yes.
Q. What is the population of Franklin county now?
A. According to the census report, it is 10,681.

(Complainant objects to question and answer thereto upon same grounds given above.)

Q. What is the population of Colbert county now?
A. According to the census report, it is 20,189.

(Complainant objects to question and answer thereto on grounds noted above.)

Q. When did you cast your first vote?
A. In 1845.

160 (Complainant objects — and answer thereto on the grounds that it is immaterial, irrelevant, and illegal.)

Q. Outside the reports given in the census reports, are there not twice as many votes cast in the counties mentioned now as there was when you cast your first vote?

(Complainant objects to the question on the grounds that it is leading the witness.)

A. Yes, sir.
Q. What is the present population of Florence?
A. About 7,000.

(Complainant objects on the grounds of irrelevancy as above.)

Q. In making this statement as to the population of Florence, have you been aided by information derived from others?
A. I have not.
Q. State if, from your own knowledge, you consider the population of Florence to be about 7,000.
A. I do.

(Complainant objects to the question and to the answer on the grounds mentioned above.)

Q. When was there a census taken?
A. A census of school children was taken about a year ago—less than a year ago.

(Complainant objects to question and answer thereto on grounds already stated.)

Q. When did you first visit Tuscumbia?
A. In August, 1840.

Q. About what was the size of Tuscumbia at that time?
A. It was said to be about the size as Florence.

(Complainant objects to the question and the answer thereto on the grounds heretobefore mentioned.)

Q. Has Tuscumbia increased in size since that time?
A. Yes, sir; it has increased quite considerable.

(Complainant objects to the question and answer on grounds noted above.)

Q. What is the population of Tuscumbia now?
A. I don't know, but I think it is about 2,500.

(Complainant objects to the question and the answer thereto on grounds heretofore noted.)

Q. Did the town of Sheffield have an existence in 1830?
A. No, sir.

(Complainant objects to this question on same grounds noted above.)

Q. When was the town of Sheffield founded?
A. I think about six years ago.

(Complainant objects to this question and answer thereto on same grounds noted above.)

161 Q. About what is the population of Sheffield?
A. I think about 2,500.

(Complainant objects to the question and answer thereto on same grounds as noted above.)

Q. Were there any iron furnaces in Colbert, Franklin, and Lauderdale Co. in operation in 1840?
A. There was one in Franklin county near Russellville, in or perhaps a little before 1840.

(Complainant objects to the question and the answer on the grounds heretofore stated.)

Q. How far was that from the Florence bridge?
A. About 22 miles.

(Complainant objects to the question and the answer on the grounds heretofore stated.)

Q. About what was the capacity of that furnace?
A. I do not know.

(Complainant objects to the question and the answer thereto on the grounds heretofore stated.)

Q. Are there any iron furnaces in Tuscumbia, Sheffield, or Florence?
A. There are furnaces in Florence and Sheffield.

(Complainant objects to the question and answer on grounds heretofore given.)

Q. How many are there in Florence?
A. There are two.

(Complainant objects to this question and to the answer thereto stated.)

Q. Were they in blast last year?
A. One was, in the early part of the year.

(Complainant objects to question and answer on the grounds stated.)

Q. Were any of the Sheffield furnaces in blast?
A. I have heard so, but do not know.

(Complainant objects to question and answer on the grounds heretofore given.)

Q. Are there any other manufactories in Florence?
A. Yes, sir.

(Complainant objects to the question and answer on grounds heretofore given.)

Q. What manufactories are there in Florence?
A. There are the pump works, the Cherry cotton mills, and the wagon works.

(Complainant objects to the question and the answer thereto stated.)

162 Q. You have stated that you first visited Tuscumbia in 1840. How did you cross the river?
A. I crossed it on a bridge, the Florence bridge.

(Complainant objects to the question and the answer thereto on the grounds heretofore stated.)

Q. Was it the same bridge that is now across the river at Florence?
A. No, sir.

(Complainant objects to the question and answer thereto on the grounds heretofore stated.)

Q. What became of the bridge?
A. It was blown down.

(Complainant objects to the question and the answer thereto on grounds heretofore stated.)

Q. In what year or about what year was it blown down?
A. Think it was in 1852, but am not positive as to the year.

(Complainant objects to the question and answer thereto on grounds heretofore stated.)

Q. Did you pay toll when you crossed in 1840?
A. Toll was paid, but I think it was paid by my father. I rode on horseback behind another man.

(Complainant objects to the question and the answer thereto on the grounds heretofore stated.)

Q. Have you crossed the Florence bridge within the last five years?

A. Yes, sir; I have.

(Complainant objects to the question and the answer thereto on grounds heretofore stated.)

Q. What is the difference between the tolls charged then and now?

A. I do not know what tolls are charged now and cannot answer the question. I do not know.

(Complainant objects to the question and the answer thereto on the grounds heretofore stated.)

Q. About what time was the present bridge — across the river at Florence?

A. I do not know.

(Complainant objects to the question and the answer thereto on grounds heretofore given.)

Q. Was the old bridge entirely destroyed?

A. Entirely so; all but the piers, I believe.

(Complainant objects to the question and the answer thereto on grounds heretofore stated.)

Q. What was the character of the old bridge?

163 A. It was a thorou*gh*fare bridge.

(Complainant objects to the question and the answer thereto on grounds heretofore stated.)

Q. What is the character of the present bridge?

A. It is an iron bridge with the railroad tracks above and the thoroughfare bridge beneath.

(Complainant objects to the question and the answer thereto on the grounds heretofore given.)

Q. In the construction of the present bridge was there any new piers added?

A. Yes; but I do not know how many.

(Complainant objects to the question and the answer thereto on grounds heretofore stated.)

Q. Was the entire superstructure of the bridge destroyed?

A. Yes; a part of it was blown down one year and the rest of it the succeeding year.

(Complainant objects to the question and to the answer thereto on the grounds heretofore stated.)

Q. Was it all destroyed before the present bridge was commenced?

A. All but the piers.

(Complainant objects to the question and the answer thereto on the grounds heretofore stated.)

Q. When was the railroads commenced?
A. I think that they were commenced about 1832 or 1833.

(Complainant objects to the question and answer thereto on grounds already stated.)

Cross-examination of Wm. M. Jackson.

By John H. Sheffey, Esq.:

Q. Without reference to the census reports, have you an independent recollection of Florence and Tuscumbia during the years heretofore mentioned?
A. I have no actual recollection.
Q. How long has the Memphis & Charleston railroad been operating the Florence bridge?
A. I do not know.
Q. Do you recollect what year they took control of it, or about what year?
A. I do not.
Q. Did they have possession in 1853?
A. No, sir.
Q. Have they not been operating it for upwards of forty years?
A. I do not know. I doubt that they have been in posses-
164 sion and operating it for that length of time, but possibly they have been.
Q. They have been charging toll, have they not?
A. Yes, sir.
Q. According to the census report, what was the population of Tuscumbia in 1840?
A. It was 14,270, as I stated in my direct examination.
Q. According to the same authority, what was the population of Lauderdale county in 1840?
A. It was 14,485.

Redirect examination:

Q. What was the population of Lauderdale county in 1890, according to the same authority?
A. It was 23,739, according to the census reports.
Q. What was the population of Franklin and Colbert counties in the year 1890, according to the same report?
A. Franklin county is given as 10,681 and Colbert county as 20,189.

(Complainant objects to the two foregoing questions and the answers thereto on the ground that it is not the best evidence and because the witness has no independant recollection of the matter outside of the alleged reports.)

Deposition of Gen. S. D. Weakley.

Examination by W. J. Wood, Esq.:

Q. General, what is your age?
A. I am in my 85th year. I was born Oct. 2, 1812.
Q. When did you come to Florence?
A. In 1831.
Q. Did you move here to reside at that time?
A. Yes, sir; in 1831.
Q. About what was the population of Florence in 1832?
A. I suppose about 1,200 or 1,500.

(Complainant objects to the question and the answer thereto on the grounds that it is not the best evidence obtainable and it is irrelevant and immaterial.)

Q. Have you lived in Florence ever since you moved here in 1831?
A. I have.
Q. About what is the population of Florence at the present time, and — in the years 1894, 1895?
165 A. About four, five, or six thousand, it is supposed to be. It has been set at seven thousand. I do not know what it is.

(Complainant objects to the question and answer thereto on the ground already given.)

Q. Has the town or the county increased or decreased in population since 1830?
A. I suppose it has increased since 1830, but how much I do not know; but to make a rough guess, I should say that it has increased somewhat in the county and a considerable in the town itself. It has not grown much in the county in the last fifty years.

(Complainant objects to the question and the answer thereto on the grounds heretofore stated.)

Q. Do you know when the first bridge at Florence was constructed?
A. I think it was first commenced about 1835 or 1836. They were several years building it, and I think it was finished somewhere about 1840. I recollect crossing it on the trestles along towards the completion of it, and I think it was about 1839 or 1840.

(Complainant objects to the question and to the answer thereto on the ground heretofore given.)

Q. How long did that bridge remain there?
A. I think it was blown down by a storm in 1854 or 1855. I remember the time very well. I was coming home from Paducah and saw the wreck.

(Complainant objects to the question and the answer thereto on the grounds already stated.)

Q. Was it entirely destroyed at that time?
A. All but one or two spans on the south side of the river, and the next year the remaining spans were blown away. I cannot say whether it was one or two spans that were destroyed the last time.

(Complainant objects to the question and the answer thereto on the ground heretofore mentioned.)

Q. Who did the property belong to?
A. The Florence Bridge Company.

(Complainant objects to the question and the answer thereto on same ground as heretofore stated.)

Q. Were the piers left standing in the river?
A. Yes, sir.

166 (Complainant objects to the question and the answer on the grounds heretofore stated.)

Q. How long after was it that the Memphis & Charleston rail road was built into Florence?
A. It was about two or three years. The bridge company sold out their franchises to the Memphis & Charleston railroad. They bought the property and built the bridge. They bought the property and franchises from the ferry Co.

(Complainant objects to the question and answer thereto on the grounds heretofore stated.)

Q. How long after that was the bridge blown down?
A. Two or three years or one or two years; cannot say exactly.

(Complainant objects to the question and the answer thereto on grounds heretofore stated.)

Q. What sort of a contract was made?
A. I do not know. The owners of the bridge took stock in the railroad company. I suppose there was a contract. I had stock in the R. R. Co. I sold out my stock.

(Complainant objects to the question and to the answer thereto on the grounds heretofore stated.)

Q. Did they not get very little for their holdings?
A. I think that the stockholders received a very fair exchange for their holdings. They received stock in the M. & C. R. R. Co. for it.

(Complainant objects to the question and to the answer thereto on grounds heretofore stated.)

Q. Are you a stockholder in the M. & C. R. R. Co.?
A. Am not now; I was the holder of considerable, but, seeing how it was going, I sold out.

(Complainant objects as heretofore.)

Cross-examination of Gen. S. D. WEAKLEY.

By JOHN H. SHEFFEY:

Q. The Memphis & Charleston Railroad Company have operated the bridge as a toll-bridge ever since they bought it from the Florence Bridge Company and erected the bridge on the piers of the old bridge, have they not?
A. Yes, sir.

167 Redirect examination by W. J. WOOD, Esq.:

Q. Did not the M. & C. R. R. Co. have to put in some new piers?
A. Yes, sir; they put in additional piers. The old piers were too far apart for railroad purposes, and they had to fix the old piers somewhat.

(Complainant objects to the question and the answer to the same on the grounds that it is illegal, irrelevant, and immaterial.)

Q. From 1830 to 1850 was there not a large amount of freight brought up the Tennessee river on boats?
A. Yes, sir; most of it.

(Complainant objects to the foregoing question and the answer thereto on the ground that it is irrelevant, immeterial, and illegal.)

Deposition of J. C. Conner.

Examination by W. J. WOOD, Esq.:

Q. What is your name, your age, and your residence?
A. My name is J. C. Conner; I am fifty-seven years of age, and reside in Florence.
Q. When did you move to Florence?
A. It was in 1860, I think.
Q. Is Florence a larger town in population and business than it was when you came hear, in 1860?
A. Yes, sir.

(Complainant objects to the question and the answer thereto on the ground that it is irrelevant and immeterial.)

Q. About what is the difference in population?
A. My recollection is that it was about 1,500 when I came here, in 1860, and now it is about 6,000.

(Complainant objects to question and answer as above.)

Q. Do you know the towns of Tuscumbia and Sheffield?
A. Yes, sir.
Q. Is not Tuscumbia larger now than at that time?
A. I cannot answer as to that.
Q. How about Sheffield?
A. Sheffield has not been founded only about nine years; consequently it is larger now.

(Complainant objects to the question and the answer thereto on the grounds given above and on the further ground that it is not the best evidence.)

Q. How far is it from Sheffield to the bridge?
A. About three miles.

168 (Complainant objects to the question and to the answer thereto on the grounds given above.)

Q. What is its size in population?
A. I suppose about 1,000; maybe 1,200.

(Complainant objects to the question and answer on the grounds mentioned above.)

Q. Has the manufacturing interests of Florence increased since the year 1860?
A. Florence was not a manufacturing village when I came.
Q. Is it a manufacturing town now?
A. It is.

(Complainant objects to the question and the answer thereto on grounds mentioned above.)

Q. Is Sheffield a manufacturing town now?
A. It is.

(Complainant objects to the question and the answer thereto as above.)

Q. What kind of ma*un*factories are they?
A. Sheffield has five iron furnaces and perhaps some other industries.

(Complainant objects to the question and the answer thereto on the same grounds as heretofore stated.)

Q. Are there any manufactories in Florence?
A. There are two iron furnaces.

(Complainants object to the question and the answer thereto on the grounds given above.)

Q. What is the capacity of the Florence furnaces?
A. I think that the Philadelphia furnace has a capacity of 150 tons a day, and the North Alabama furnace is rated at 75 or 100 tons a day; I do not know exactly.

(Complainant objects to the question and answer as above stated.)

Q. What is the capacity of the Sheffield furnaces?
A. I think th*ay* are about 150 tons daily, but am not positive as to their capacity, but think that is what they are rated at.

(Complainant objects to the question and the answer thereto on grounds heretofore stated.)

Q. What other manufactories are there in Florence?
A. A cotton mill, a pump factory, wagon factory, pl*a*ning mill,

hub and spoke factory, a stove factory, and a shoe factory, which does not run regularly.

(Complainant objects to the question and the answer thereto on the grounds heretofore stated.)

169 Q. Were any of these industries in operation when you came to Florence in 1860?

A. No, sir; they were not.

(Complainant objects to the question and the answer thereto on grounds as heretofore given.)

Q. What were the principal resources of Lauderdale and Colbert counties when you came here in 1860?

A. Principally agriculture. The principal crops were cotton and corn. Some stock also—mostly horses and hogs.

(Complainant objects to the question and the answer thereto on the grounds stated above.)

Q. Are you acquainted with the different manufactoring industries of Lauderdale county?

A. Yes, sir.

(Complainant objects to the question and the answer thereto on the grounds that the same is immaterial and irrelevant.)

Q. Are you one of the directors of the Cherry cotton mills?

A. I am.

(Complainant objects to the question and the answer thereto on the grounds given above.)

Q. Are you interested in banking in Lauderdale county.

A. Yes, sir; I am a director of the First National bank.

(Complainant objects to the question and to the answer thereto on the grounds stated.)

Q. Have you been connected with the Land & Development Company?

A. Yes; as president of the Sweetwater Company, the North Lake Company, and the Central Land Company, and as vice-president of the Florence Land Manufacturing and Mining Company.

(Complainant objects to the question and to the answer thereto on the grounds heretofore given.)

Q. How much more would be the tonnage of freight of a well managed business of a single iron furnace that the entire agricultural product of Lauderdale county?

A. I do not know. It would take a computation to determine it. My opinion is that seven furnaces would furnish more tonnage than the entire cotton crop of the South.

Complainant objects to the question and answer on the ground that the same is irrelevant and improper, and for further
170 ground that no proper predicate has been laid for its introduction.

Q. You say that you are a director of the Cherry cotton mills. What is its capacity?

A. My impression is that it is about 16 bales a day, working night and day, and they employ from 300 to 400 hands.

(Complainant objects to the question and the answer thereto on the ground that it is immaterial and irrelevant.)

Q. About how many hands do the wagon works employ?

A. I do not know.

(Complainant objects to the question and the answer thereto on same ground as to preceeding question and answer.)

Q. How many do the pump works employ?

A. I do not know personally, but think between one and two hundred.

(Complainant objects to the question and answer on the grounds given above.)

Q. Is it not a fact that the Sheffield furnaces get a large part of their ore north of the Tennessee river?

A. It is.

(Complainant objects to the question and answer thereto on grounds stated above.)

Q. Do they not haul it over the Florence bridge?

A. Yes, sir.

(Complainant objects to the question and the answer thereto on the same ground as stated above.)

Q. Is there any coke manufactured in Alabama south of the Tennessee river?

A. Yes, sir.

(Complainant objects to the question and the answer thereto on same grounds as preceeding question and answer.)

Q. Is that the nearest point to Florence where coke is manufactured?

A. Yes, sir.

(Complainant objects to the question and to the answer on the grounds given above.)

Q. Is there not a railroad extending from the coal fields to Florence?

A. There is.

(Complainant objects to the question and to the answer thereto on the same grounds as to preceeding questions.)

Q. When the furnaces are run in Florence is not that coke used?

A. I do not know.

(Complainant objects to the question and to the answer on the same grounds as stated above, and, further, because it calls for the opinion of the witness.)

171 Q. How is manufactered iron shipped from Florence?
A. Both by rail and by river, but mostly by rail.

(Complainant objects to the question and the answer on the ground that it is irrelevant and immaterial.)

Q. Are there any obstructions in the river that prevent shipping by boat?
A. Yes; for part of the year.

(Complainant objects to the question and the answer thereto on the same ground as in preceding question and answer.)

Q. How is business and social intercourse affected by the toll-bridge? Is it free and unobstructed, and does it not pervent it?
A. There are tolls of ten cents for a foot passenger and twenty cents for a buggy and horse.

(Complainant objects to the question and the answer thereto on the same grounds as to preceding question and answer.)

Q. Is not business and social intercourse obstructed on account of high tolls charged on the bridge?
A. I think it is.

(Complainant objects to the question and the answer thereto on the ground that it is irrelevant and immaterial, and, further, that it calls for the opinion of the witness.)

Cross-examination of J. C. CONNER.

By JOHN H. SHEFFEY:

Q. Have you actual knowledge of the population of Florence in 1860?
A. I have not. I never took the census.
Q. Have you actual knowledge of its population at the present time?
A. No, sir; we go by the last census, and by the dwelling-houses, all being occupied; should say that we have 6,000.
Q. When has there been any great activity in business since the year 1888?
A. Well, business has been pretty active for three years past. It had a depression for a few years after the boom, but this year it has been better than for some years—perhaps better than it has ever been.
172 Q. Have you actual knowledge of the number of hands employed in the various industries you have mentioned?
A. No, sir.
Q. Have you had actual experience in shipping iron, coke, coal, or other furnace products?
A. No, sir.
Q. Since your residence in Florence have you been engaged in shipping agricultural products to any great extent?
A. No, sir.

Q. Do you know from actual experience the actual output of any of the iron furnaces in Sheffield or Florence?
A. I do not.

Deposition of Harry W. Sample.

Examined by W. J. Wood, Esq.:

Q. What is your name, what is your age, and where do you reside?
A. My name is Harry Sample, my age is seventy, and I live at Florence, Alabama.
Q. Where were you born, and when?
A. I was born in Florence, in 1826.
Q. Where did you first go to school?
A. I do not remember.
Q. Do you recollect the population of Florence in the years 1832 and 1896?
A. I do not.
Q. Is Florence larger now than it was in 1832?
A. Yes, sir.

(Complainant objects to the question and the answer thereto on the ground that it is irrelevant, immaterial, and not the best evidence.)

Q. About what is the population of Florence now?
A. About 7,000.

(Complainant objects to the question and the answer thereto on the same ground as given above.)

Q. Was Florence a manufactoring place between the years of 1832 and 1840?
A. I do not know. I think some small cotton factories were started about 1840. They were run by water. I cannot state exactly when they were started up.

(Complainant objects to the question and answer thereto on the grounds stated above.)

Q. Prior to 1840, what was the principal fuel used?
A. Wood.

(Complainant objects to the question and the answer thereto on same grounds as stated above.)

173 Q. What is the principal fuel used now?
A. Coal mostly.

(Complainant objects to the question and to the answer thereto on same grounds as to above question and answer.)

Q. What is the principal fuel used in manufacturing?
A. Coal and coke.

(Complainant objects to the question and the answer thereto on the same grounds as stated above.)

Q. Are there any coal mines south of the Tennessee river?
A. Yes, sir.

(Complainant objects to the question and the answer thereto on the same grounds given heretofore.)

Q. Is there any railroad to the coal mines?
A. Yes, sir.

(Complainant objects to the question and the answer thereto on the same grounds as to preceeding question and answer.)

Q. How is coal brought to Florence?
A. By railroad mostly.

(Complainant objects to the question and the answer thereto on same grounds as to preceeding question.)

Q. Do you remember the bridge of the old Florence Bridge Company?
A. Yes, sir.

(Complainant objects to the question and the answer thereto on the same grounds as heretofore stated.)

Q. What became of it?
A. It was blown down in the spring of 1854, and the timbers floated down the river, and it is said that many of the timbers were found at "7-mile" island.

(Complainant objects to the question and the answer thereto on the same grounds as stated heretofore.)

Q. Was the superstructure entirely blown down?
A. About half of it.

(Complainant objects as heretofore stated.)

Q. What became of the rest?
A. It was blown down the next year.

(Complainant objects to the question and the answer thereto on the same grounds as heretofore stated.)

Q. How long after this was the Memphis & Charleston railroad built?
A. I do not know.

(Complainant objects to the question and the answer thereto on the same grounds as heretofore stated.)

174 Q. How did you cross the river?
—. We crossed by ferry. There were horse-boats, flat-boats, and a steam ferry.

(Complainant objects to the question and answer thereto on the same grounds heretofore stated.)

Q. Do you recollect when the Memphis & Charleston Railroad Company obtained possession of the bridge?
A. I do not.

(Complainant objects to the answer and the question on the same grounds as heretofore stated.)

Q. Did the M. & C. R. R. Co. build new piers?

A. I do not know. I do not think that they did for the first bridge. The present bridge is the second bridge, and I think some were built for the second bridge.

(Complainant objects to the question and the answer thereto on the ground that it is irrelevant and immaterial.)

Cross-examination of HARRY W. SAMPLE.

By JOHN H. SHEFFEY, Esq.:

Q. Were the piers left standing after the superstructure fell?

A. Yes, sir; to the best of my recollection.

Q. Has the M. & C. R. R. Co. operated the bridge as a toll-bridge since they came in possession of it?

A. Yes, sir; to the best of my recollection.

Q. Was the country in a prosperous condition up to the commencement of the war?

A. Yes, sir.

Q. How many manufactories were there here before the war?

A. I think there were seven on this side of the river, within 13 miles of Florence—four cotton and three woolen.

Q. Did you ever take the census for any of the years that you have lived here?

A. I took the census of the township, but not of the corporation, for 1880. The corporation was not included.

Q. What was the population of the county?

A. My recollection is that I took about 1,700 in the township outside of the corporation. The corporation is a mile square.

Q. How many bridges did the M. & C. R. R. Co. build?

A. Two—the present one and one before.

Q. Has the M. & C. R. R. Co. been operating it as a toll-bridge since obtaining possession of it.

A. Yes, sir; that is my recollection of it.

Redirect examination:

Q. You state in your cross-examination that there were seven cotton mills and woolen factories in operation in and near Florence before the war. Who operated them?

A. Martin and Weakley had three cotton factories; Ball, King & Co. had one cotton factory; Martin and Son had a woolen factory; Woodbury & Wren and Garberry, Burnham & Co. each had a cotton factory.

(Complainant objects to the question and answer thereto on the ground that it is irrelevant and immaterial.)

Q. When was Garberry & Co.'s factory built?

A. I do not remember; I think about 1855.

(Complainant objects to the question and answer thereto on the grounds above stated.)

Q. When was Woodbury, Wren & Co.'- factory built?
A. I think about 1850.

(Complainant objects to the question and the answer thereto on the same grounds heretofore stated.)

Q. When was Martin & Son's woolen factory built?
Q. It was just before the beginning of the war; I think about 1859.

(Complainant objects to the question and the answer thereto on the same grounds heretofore stated.)

Q. When was Ball & Co.'s cotton factory built?
A. About 1850.

(Complainant objects to the question and the answer thereto on the same grounds as heretofore stated.)

Q. When were Martin & Weakley's factories built?
A. The first one between 1840 and 1850.

(Complainant objects to the question and the answer thereto on the same grounds as heretofore stated.)

Q. Were any of these factories built before 1840?
176 A. No, sir; I think about 1844 was the time the first one was built, but it may have been built as early as 1840. There was a frame building that might have — built as early as 1840, but the brick building was not put up until 1844.

(Complainant objects to the question and the answer thereto on the grounds stated heretofore.)

Q. Was there any railroad in this country in 1832?
A. There was not, unless the road to Tuscumbia had been built.

(Complainant objects to the question and the answer thereto as irrelevant and immaterial.)

Q. How many railroads running into Florence now?
A. There is a branch of the Louisville & Nashville and the Memphis & Charleston.

(Complainant objects to the question and answer thereto on the grounds heretofore stated, and on the further ground that it is not in rebuttal.)

Q. Are there any roads projected?
A. Yes; the Florence Northern, of which about twenty-seven miles are graded and tresseled all ready for the ties and iron.

(Complainant objects to the question and the answer thereto on the grounds stated in the previous objection.)

Q. Where does this projected railroad run?
A. It runs north from Florence through the iron fields of Tennessee.

(Complainant objects to the question and the answer thereto on the grounds stated in the previous objection.)

Recross-examination:

Q. Did you ever hear of Jay Gould's Nickel Plated railroad?
A. Yes, sir; I have read accounts of it.

(This question and the answer thereto is not objected to by the defendant.)

Q. The Florence Northern is a contemplated railroad, is it not?
A. It was commenced and graded about twenty-seven miles.
Q. Has it ever been finished?
A. No, sir; nothing but the grading and tresseling ready for the ties and the iron.

177 *Deposition of P. J. Bond.*

Examined by W. J. Wood, Esq.:

Q. What is your name, your age, and your residence?
A. My name is P. J. Bond; I am fifty years of age, and my residence is Florence.
Q. What is your occupation?
A. I am a teacher.
Q. Have you ever had anything to do with taking the census of Florence?
A. Yes, sir; I have taken the scholastic census three times—once in every two years.
Q. What is the present population of Florence?
A. About 7,000.

(Complainant objects to the question and the answer thereto, as it is not the best evidence and is immeterial.)

Q. What railroads enter Florence?
A. The Louisville & Nashville and the Memphis & Charleston.

(Complainant objects to the question and the answer thereto on the ground that it is immaterial and is not the best evidence.)
(Complainant did not cross-examine this witness.)

Deposition of George P. Arthur.

Examined by W. J. Wood, Esq.:

Q. What is your name, your age, and residence?
A. My name is George P. Arthur; my age is 45, and I have lived in Florence about six years.
Q. How many banks are there in Florence?
A. Two at present.

(Complainant objects to the question and the answer thereto on the ground that it is irrelevant and immaterial.)

Q. How many hotels are there in Florence?
A. Three at present.

(Complainant objects to this question and the answer thereto on the grounds stated above.)

Q. How many livery stables are there in Florence?
A. Four at present.

(Complainant objects to the question and the answer thereto on the same grounds as stated above.)

178 Q. How many retail stores in Florence?
A. Between fifty and sixty.

(Complainant objects to the question and the answer thereto on the same grounds as stated above.)
(No cross-examination by complainant.)

Deposition of Alex. D. Coffey.

Examination by W. J. Wood, Esq.:

Q. What is your name, age, and residence?
A. My *mane* is Alexander D. Coffey; my age is 75 last June; I was born and raised within three miles of Florence, and have lived here all my life.
Q. When did your family move here?
A. My father moved to this county in 1819.
Q. Do you know the size of Florence in 1832?
A. My impression is that it was larger in 1832 than it was a few years later.
Q. What was the population at that time?
A. About 1,200 to 1,500.

(Complainant objects to the question and the answer thereto on the grounds that it is immaterial, irrelevant, and illegal and on the further ground that it is not the best evidence.)

Q. What was the size of Tuscumbia then?
A. It was somewhere about a thousand; it was only a small village.

(Complainant objects to the question and to the answer thereto on the grounds stated in the preceeding question.)

Q. How did people cross the river?
A. By horse ferry.

(Complainant objects to the question and the answer thereto on the grounds heretofore stated.)

Q. Did the Florence Bridge Company have a bridge across the river?
A. Yes; there was a thoroughfare bridge—a wooden bridge sided up. It lasted a few years and was blown down. A part of it was blown down one year and the remainder the next year. It was a well-built bridge for a wooden bridge. The piers were cut stone

but think they were not laid in cement. My impression is
179 that it cost from fifty to seventy-five thousand dollars to build.

(Complainant objects to the question and the answer thereto on the grounds stated above.)

Q. Did your family have any stock in the bridge Co.?
A. Yes, sir.

(Complainant objects to the question and the answer thereto on the same grounds as stated above.)

Q. Did you get anything for it?
A. No; only what timber I caught from the wreck when the bridge was blown down. I caught a lot of timbers at "7-mile island" and had a gate built of it, and used to say it was "my twenty-five-hundred-dollar gate." I think my family had about five thousand dollars in stock.

(Complainant objects to the question and the answer thereto on the same grounds as heretofore stated.)

Q. Was the bridge entirely blown away?
A. No, sir; about one quarter of it, and later another section was blown away.

(Complainant objects to the question and to the answer thereto on the same grounds as heretofore stated.)

Q. Do you recollect what year the Memphis & Charleston Railroad Co. built the bridge across the river?
A. No, sir; it was being built before the war; it might be about 1850.

(Complainant objects to the question and the answer on the grounds heretofore stated.)

Q. What part of the old bridge did they use in building the new?
A. I think that they used the piers after strengthening them somewhat. I do not think that they used any part of the timbers or superstructure.

(Complainant objects to this question and the answer thereto on the grounds stated in the previous objections.)

Q. Do you know whether any formal contract was made by the bridge Co. and the Memphis & Charleston R. R. Co.?
A. I suppose that a contract was made, but I do not know of my own knowledge.

(Complainant objects to the question and the answer thereto on the same grounds as heretofore stated.)

180 Q. Were there any new subscriptions?
A. I think there were a large number of subscriptions and that a large amount was subscribed.

(Complainant objects to the question and the answer thereto on the same grounds as heretofore stated.)

Q. Was there enough subscribed to build the railroad here?
A. There might have been. I know that there was a large amount subscribed. If there was not enough subscribed on this side there was mighty near it. I think that Governor Patton had a provision put in the contract that if the road was built this side there was to be a branch run to Tuscumbia, and if built on that side there was to be a branch built to run here.

(Complainant objects to the question and the answer thereto on the grounds heretofore stated.)

Q. I hand you a paper. Please state what it is, and do you recognize any of the signatures thereon; if so, whose are they?

(Complainant objects to the question because the paper itself is the best evidence, and, further, because no proof is made as to the signature of Thomas Pearsall.)

A. The paper is a certificate for ten shares of stock in the Florence Bridge Company, issued to Thomas Pearsall, but the signatures of the others, James Irvine, Jos. H. Weakley, Martin Hawkins, John Simpson, and R. M. Patton, I do recognize.
Q. Are these the signatures of the directors of the bridge company?
A. Yes, sir.

(Complainant objects to the question and the answer thereto on the same grounds as stated above.)

Q. Did all of the directors of the Florence Bridge Company consent to the sale of the Florence bridge?
A. I do not know, but presume that they did.

(Complainant objects to the question and the answer thereto on the grounds that it is immaterial, irrelevant, and illegal, and, further, because it calls for the opinion of the witness.)
(The witness appends the certificate of stock in the Florence Bridge Co., as identified by him, to his deposition and makes
181 it part — the same.)

EXHIBIT "A" TO A. D. COFFEY'S DEPOSITION.

Certificate of Stock, Florence Bridge Company.

Description.

Left margin: Vignette, Florence Bridge Co.
Right margin: Vignette, certificate of stock.

Body of certificate.

An act incorporating the president, directors, and company of the Florence Bridge Company for the purpose of erecting a bridge across the Tennessee river at Florence; passed the 12th day of January, 1832, by the legislature of the State of Alabama.

No. of certificate, 97.

We, the undersigned, president and directors of the said company, do hereby certify that Thomas Pearsall is entitled to ten shares of the capital stock in the said company, at one hundred dollars per share, and that the same stands in his name in their books at Florence.

The stock in said company is transferable by endorsement on the certificates, which will entitle the endorsee to all the rights and emoluments of the original holder.

JAS. IRVINE, *President.*
JOS. H. WEAKLEY,
MARTIN HAWKINS,
JOHN SIMPSON,
R. M. PATTON,
} *Directors.*

For 10 shares.

Florence, 1st Aug., 1840.

Endorsed: I assign the within to John Simpson for value rec'd. Thomas Pearsall.

Cross-examination of ALEX. D. COFFEY.

By JOHN H. SHEFFEY, Esq.:

Q. Who was John Simpson?

A. He was a merchant in Florence, a large planter, a director of the bridge company, and a very wealthy man.

Q. Was he largely instrumental in having the Memphis
182 and Charleston R. R. built to Florence?

A. I have no doubt but what he was. All the business men were very desirous of having a branch road built to Florence.

Q. Did you individually own stock in the Florence Bridge Company?

A. I did not, except through my father's estate. My mother held between two and three thousand dollars of it.

Q. What became of it?

A. I do not know. Gen. Weakley was the executor of the estate.

Q. Did it not go into the purchase of the bridge by the Memphis & Charleston Railroad Co.?

A. I do not know; think that they were given stock for it; think between two and three thousand dollars was given for it.

Q. You say that John Simpson, the man whose name is on the back of the certificate filed as Exhibit "A" to your deposition, was one of the directors of the company?

A. Yes, sir.

Q. In what year did the Memphis and Charleston build a bridge on the piers of the old bridge?

A. I think it was in 1850. It was some years before the war.

Q. Have you ever heard of any of the old stockholders of the Florence Bridge Company dissenting to the sale made to the Memphis & Charleston Railroad Company?

A. I never heard any expressions of dissent; on the contrary, everybody was extremely anxious for it.

Q. Have you an actual knowledge, from taking the census, of what the population of Florence and Tuscumbia was in 1832?

A. No; I could not state to you positively. I, however, know that Florence was small and Tuscumbia smaller. Florence had about 1,200 and Tuscumbia about 1,000 inhabitants, is my impression.

Redirect examination of ALEX. D. COFFEY.

By W. J. WOOD, Esq.:

Q. You state that you do not know that every stockholder of the Florence Bridge Co. consented to the contract?

183 A. I do not know that they did, but do know that all were extremely anxious to have a branch road to Florence.

(Complainant objects to the question and the answer thereto on the ground that it is immaterial and irrelevant and calls for the opinion of the witness.)

Q. How much stock did Mr. Pearsall get?

A. I do not know.

(Complainant makes same objection to this question and the answer thereto.)

Q. Did he get $25,000?

A. I do not know.

(Complainant makes the same objection to this question and the answer thereto.)

Q. Did he sell his stock here or elsewhere?

A. I do not know which he did, but if he sold elsewhere the proceeds would not have been as much as if it had been sold here.

(Complainant objects to the question and the answer thereto on the ground that it is not shown that Pearsall sold his stock any-

where and because it calls for a conclusion of the witness and for his opinion.)

Q. Where did Mr. Pearsall reside?

A. He resided here for ten or fifteen years. He came here from New York. He was a bridge engineer, and came here to build the bridge. I do not know where he went when he left here.

(Complainant objects to the question and the answer thereto on the ground that it is immaterial and irrelevant.)

Q. Do you know whether Pearsall transferred his stock to the railroad or not?

A. I do not.

(Complainant objects to the question on the same grounds.)

Deposition of J. Overton Ewin.

Examined by W. J. Wood, Esq.:

Q. What is your name, age, residence, and occupation?

A. My name is J. Overton Ewin; my age is 35; I reside in Florence, and my occupation is that of general agent of the Louisville & Nashville R. R.

Q. Have you been engaged in the freight department of the railroad?

A. Yes, sir.

Q. Suppose the product of the county is 5,000 bales of
184 cotton, which would afford the most business to a railroad company, that or an iron furnace with a capacity of 150 tons per day?

(Complainant objects to this question on the ground that it is irrelevant and immaterial, and, further, because no proper predicate has been laid for its introduction, and to the answer upon the same grounds.)

A. The furnace would furnish a great deal more tonnage.

Q. Is it not your opinion that the output of a single furnace of 150 tons per day capacity would furnish more tonnage for a railroad than a 50,000-bale crop of cotton?

A. Yes, sir.

(Complainant objects to the question and to the answer thereto upon the same grounds as given above.)

Q. How many iron furnaces are there in Florence and Sheffield?

A. 7.

(Complainant objects to question and answer thereto on the ground that it is irrelevant and immaterial.)

Q. What is the average capacity of these furnaces, taken altogether?

A. That would vary somewhat be circumstances, but I should say about 1,250 tons daily, on an average.

(Complainant objects to the question and the answer on the same grounds as preceeding question.)

Q. How many of these furnaces are now in operation?
A. 2, at Sheffield.

(Complainant objects to the question and the answer thereto on same grounds as to preceeding question.)

Q. Have any of the Florence furnaces been in operation lately?
A. Yes; last year, not this year.

(Complainant objects to the question and answer on the same grounds as stated above.)

Q. Where did the Sheffield furnaces get coke from?
A. One furnace gets daily from 5 to 7 cars from the Virginia Coal and Coke Co., at Dorchester, West Virginia. It also receives a part of its supplies from a point on the K., C. M. & B. R. R. The other gets from 2 to 5 cars daily from Pineville, Ky., and Dorchester, W. Va., and gets the rest of its supply from Chattanooga and from ovens about Jasper, on North Ala. R. R. This coke
185 supply, as I have stated above, as I understand it, does not cover any special length of time. They change from one to another, as necessary.

(Complainant objects to the question and answer on the grounds previously stated.)

Q. Does any of this coke cross the bridge?
A. All from Pineville and Dorchester.

(Complainant objects to the question and the answer on the grounds previously stated.)

Q. About how many cars of coke cross the bridge daily?
A. I would say that under the present arrangements for coke that from 9 to 12 cars of coke pass over the bridge daily.

(Complainants object to the question and the answer thereto on the grounds previously stated.)

Q. Where do the Sheffield furnaces get the ore from?
A. One, the Sheffield Coal, Iron and Steel Co., gets its entire supply from the Pine Ridge, Tenn., about 30 miles north of Florence. The Colbert Iron Co. get from 8 to 11 cars daily from West Point, Tenn., 28 miles north of Florence.

(Complainants object to the question and the answer thereto on the grounds previously stated.)

Q. Does all this ore pass over the bridge?
A. Yes, sir.

(Complainant objects to the question and the answer thereto on the grounds previously stated.)

Q. How many cars daily?
A. From 22 to 30 cross daily.

(Complainant objects to the question and the answer thereto on the ground- previously stated.)

Q. Does the Louisville & Nashville R. R. do business over the bridge?

A. Yes, sir; both freight and passenger.

(Complainant objects to the question and the answer thereto on the grounds previously stated.)

Q. What is the nature of the trains between Florence and Sheffield?

A. Solid passenger trains are run daily from Tuscumbia to Columbia, Tenn.

(Complainant objects to the answer thereto on the grounds previously stated, and upon the additional grounds that it is
186 not shown whether a verbal or written contract exists between the Memphis & Charleston and the Louisville and Nashville railroads as to the passing of trains over the bridge.)

Q. Is there a contract between the Memphis and Charleston and the Louisville & Nashville railroads as to the passing of trains over the bridge?

A. Yes, sir; there was a copy of such contract sent to me.

(Complainant objects to the question and the answer thereto on the same grounds as in the preceding question.)

Q. Do you keep a switching engine?

A. Yes, sir.

(Complainant objects to the question and the answer thereto on the grounds mentioned above.)

Q. Does the Memphis & Charleston R. R. keep a switching engine?

A. Yes, sir.

(Complainant objects to the question and the answer thereto on the same grounds as to previous question.)

Q. Does the Memphis & Charleston R. R. run passenger trains daily over the bridge?

A. Yes, sir.

(Complainant objects to the question and the answer thereto on the grounds that it is irrelevant and immaterial.)

Q. Is there a Belt railroad at Florence?

A. There is a road at Florence called the Belt line.

(Complainant objects to the question and the answer thereto on the grounds stated in the previous question.)

Q. What manufactories are situated on this Belt line?

A. The Florence wagon works, the spoke and hub factory, Cherry cotton mills, Philadelphia furnace are about all that do any shipping.

(Complainant objects to the question and the answer thereto on grounds previously stated.)

Q. Are all in operation now except the Philadelphia furnace?
A. Yes.

(Complainant objects to the question and the answer thereto on the same grounds as in previous questions.)

187 Q. Is the product of these factories shipped by rail from Florence?
A. Yes, sir.

(Complainant objects as heretofore.)

Q. Does part of this go over the bridge?
A. Yes, sir.

(Complainant objects to the question and the answer thereto on the same ground as to previous questions.)

Q. What is the fuel used by these factories?
A. Mostly coal.

(Complainant objects to the question and the answer thereto on the grounds previously stated.)

Q. What is the terminus of the North Alabama R. R.?
A. Sheffield.

(Complainant objects to the question and the answer thereto on the same grounds as previously stated.)

Q. Where does it run to?
A. From Sheffield to Parrish.

(Complainant objects to the question and the answer thereto on the same ground as to previous questions.)

Q. Does this road pass through coal fields?
A. It does.

(Complainant objects to the question and the answer thereto on the same ground as to the preceeding questions.)

Q. Are they developing coke ovens on this line?
A. Yes, sir.

(Complainant objects to the question and the answer thereto on the same grounds as to the preceeding questions.)

Q. When the Florence furnaces again go into blast, is it not thought that they will use coke from these fields?
A. Yes; probably.

(Complainant objects to the question and the answer thereto on the grounds heretofore stated, and because it calls for the opinion of the witness.)

Q. Does any of the coal used for fuel in Florence come from these coal fields, and is it brought across the bridge?
A. Yes, sir; it is used in Florence and is brought across the bridge.

(Complainant objects to the question and the answer thereto on the same grounds as to the preceeding question.)

188 Cross-examination of J. OVERTON EWIN.

By JOHN SHEFFEY, Esq.:

Q. What is the daily output of the two furnaces in operation at Sheffield?

A. About 350 tons or more daily.

Q. Is the output daily shipped in quantities of 350 tons?

A. Yes; practically so.

Q. You state that one of the Sheffield furnaces has contracts for from 5 to 7 cars of coke daily. Does this coke pass over the Florence bridge?

A. Yes, sir.

Q. What railroad hauls these cars?

A. The Louisville & Nashville.

Q. Do you know if the Memphis & Charleston railroad haul any coke?

A. Yes, sir; they haul from one to three cars daily. At present, as the furnaces are constantly changing their source of supplies, the amount hauled is also constantly changed.

Q. It is true, is it not, that the furnaces are constantly changing their source of supplies of coke?

A. Yes, sir.

Q. Then the route over which supplies are hauled is also changed, is it not?

A. Yes, sir.

Q. What is the name of the furnace that is using the three to five cars of coke daily that is hauled over the bridge?

A. The Sheffield Iron and Steel Co.

Q. How many cars are hauled for them by the Memphis & Charleston R. R. Co.?

A. None.

Q. This furnace also frequently changes its source of supplies and also the route over which it is hauled, does it not?

A. Yes, sir.

Q. Then the daily consumption of coke by the two furnaces that is hauled over the bridge averages from nine to twelve cars daily, does it not?

A. Yes, sir.

Q. The daily consumption of ore from the two furnaces mentioned that is hauled over the bridge is from 22 to 30 cars, is it not?

A. Yes, sir.

189 Q. How many of these cars do the Memphis & Charleston and how many do the Louisville & Nashville haul?

A. The Louisville & Nashville handle all of them.

Q. What proportion of the product of the various factories that you have mentioned does the Louisville & Nashville haul over the bridge?

A. Practically none.

Q. How much does the Memphis & Charleston R. R. handle?
A. Practically all of it.
Q. Is it not a fact that the source of supplies of iron ore for the Sheffield furnaces is frequently changed and the route also is changed?
A. No, sir; not to the extent of the number of cars heretofore mentioned as crossing the bridge.
Q. Is the Philadelphia furnace in Florence in operation now?
A. No; and it has not been in operation this year.
Q. Are the coal fields to which the North Alabama railroad runs the north or south side of the river?
A. They are on the south.
Q. In hauling coal supplies from these coal fields would you have to haul over the Florence bridge?
A. No, sir; you would not.

Redirect examination of J. OVERTON EWIN.

By W. J. WOOD, Esq.:

Q. Is there a cotton compress in Sheffield?
A. Yes, sir.

(Complainant objects to the question and the answer thereto on the ground that it is irrelevant and immaterial.)

Q. Does it do a good business?
A. I understand that it does about 12,000 bales.

(Complainant objects to the question and the answer on the same grounds as to previous question.)

Q. Do you get a large proportion of its business?
A. Fairly so.

(Complainant objects to the question and the answer thereto on same grounds as to previous question.)

Q. On the daily output of 350 tons of iron by the Sheffield iron furnaces what per cent. do you get to haul over the bridge?
190 A. I think about 50 per cent.

(Complainant objects to the question and the answer thereto on the same ground as to previous question.)

Q. Have you had any experience in the manufacture of iron?
A. I have.

(Complainant objects to the question and the answer thereto on the same ground as to previous question.)

Q. How many tons of raw material—that is, ore, coke, flux, etc.—does it take to make a ton of iron?
A. With furnaces in operation as in Sheffield I should say that to make one ton of iron it would take two tons of ore, one ton of coke, and 1,200 to 1,500 pounds of flux, making about three and one-half tons of material to one ton of iron. It would average more than less than three tons of material to the ton of iron.

(Complainant objects to the question and the answer thereto on the same grounds as heretofore stated.)

Q. You were asked in your cross-examination about the Philadelphia furnace. Do you know that it is in litigation?

A. I know that it is advertised for sale.

(Complainants object to the question and the answer thereto on the same ground as previously stated.)

Q. Is the Philadelphia furnace a well-constructed furnace?

A. It is so called by experts.

(Complainant objects to the question and the answer thereto on the same grounds as heretofore stated.)

Q. Is it not your business to keep up with the freight business here?

A. It is.

(Complainant objects to the question and the answer on same ground as to previous question.)

Q. Is not the iron made in Florence from the Tennessee ores a better iron than usually made?

A. It sells for more.

(Complainant objects to the question and the answer thereto on the same grounds as to the previous question.)

Recross-examination of J. OVERTON EWIN.

By JOHN H. SHEFFEY, Esq.:

Q. Do you haul 50 per cent. of the output of the Sheffield
191 furnaces over the Florence bridge?

A. Yes, sir; I think so.

Q. Does the Memphis & Charleston R. R. haul any of the output over the bridge?

A. No, sir; practically none.

Q. Do these furnaces run all the year?

A. That is the intention; they may bank a few days at a time.

Q. Is it not a fact that the Sheffield furnaces are not in operation now?

A. Yes, sir; it is.

Q. How much output of the compress does the Louisville & Nashville R. R. haul over the Florence bridge?

A. We hauled this season not more than five hundred bales.

Q. What did you get per car for the coke hauled for the two furnaces, hauling from Florence to Sheffield?

A. I cannot say.

Q. What did you get for the entire distance?

A. An average of from 35 to 40 dollars per car.

Q. How many miles was it hauled?

A. About 600 miles.

Q. How much per car for the entire distance did you get for hauling the output of iron from the two furnaces?

A. That would depend on the distance the iron was hauled. To St. Louis it would be $2.80 per ton.

Q. Is it not a fact that your company hold for the freight a large quantity of the coke for this furnace?

A. No, sir.

Redirect examination of J. OVERTON EWIN continued.

Examined by W. J. WOOD, Esq.:

Q. What is meant by banking the furnaces?

A. Just temporarily shutting down; not making any iron for a few days. The Sheffield furnaces were banked on Saturday last, and expect to resume operations on next Tuesday. They have been in operation almost continually for nearly two years.

(Complainant objects to the question and the answer thereto on the ground that it is irrelevant and immaterial.)

Q. What amount of cotton is received and shipped from
192 Florence in a year?

A. About 6,000 bales.

(Complainant objects to the question and the answer thereto on the ground that it is irrelevent and immaterial.)

Q. What rent does the Louisville and Nashville pay for the use of the bridge?

Q. I cannot tell.

(Complainant objects to the question and answer thereto on the ground that the contract is the best evidence.)

Q. What is the charge for switching a car from Florence to Sheffield?

A. An average car of coal is $5.00. A higher class of freight is charged more.

(Complainant objects to the question and the answer thereto on the ground that it is immaterial and irrelevant.)

Q. What is the railroad fare on your road from Florence to Sheffield?

A. Fifteen cents.

(Complainant objects to the question and the answer thereto on the ground that it is irrelevent and immaterial.)

I, Ed. E. Greenleaf, a commissioner of the circuit court of the United States and an examiner in equity, duly appointed under rule No. 67 in equity and qualified as such, do hereby certify that *that* the several witnesses whose depositions are heretofore set forth are material and necessary to the proper determination of the said cause in the caption set forth and described, and that the said witnesses are residents of the county of Lauderdale, in the said district and division.

I further certify that the foregoing depositions were taken under

the following agreement and stipulation, viz: It is agreed by and between counsel that the depositions of the several witnesses shall be taken stenographically by the examiner, and that after they are so taken they may be written out on typewriter, and the signature of the witnesses to the depositions after being so written out *ie* waived; and it is further agreed that the notice required by rules of court for the taking of testimony shall have the same effect
193 as though taken upon regular notice.

And I do further certify that the examination of the several witnesses was conducted on the part of the defendant by W. J. Wood, Esq., of counsel for the defendant, and on the part of the complainant by John H. Sheffey, Esq., of counsel for the complainant.

And I do further certify that the witnesses aforesaid, to wit, Wm. M. Jackson, Gen. S. D. Weakley, J. G. Conner, H. W. Sample, J. P. Bond, Geo. P. Arthur, Alex. D. Coffey, and J. Overton Ewin, who were of lawful age, were by me duly sworn and examined by counsel as aforesaid.

And I do further certify that I am not of counsel nor attorney for either of the parties to the suit in controversy or interested in any way in the determination of said suit.

In testimony I have hereunto set my hand and seal
[SEAL.] this the 30th day of December, 1896.

ED. E. GREENLEAF,
Examiner in Equity.

194 *Deposition of A. H. Plant.*

A. H. PLANT, being first duly sworn, doth depose and say as follows:

Counsel for the defendants in this case object to the taking of this deposition especially as to matters and thing already sworn to and testified about.

Examination by Mr. HUMES:

Q. State your name, age, and occupation.

A. Name, A. H. Plant; age, 38 years old; auditor of the Memphis & Charleston railroad.

Q. How long have you been in the employ of the M. & C. R. R. Co. and in what capacity?

A. I have been in the employ of the Memphis & Charleston R. R. since 1881, part of the time in the office of the local agent, part of the time travelling auditor, and at present auditor.

Q. How long have you been auditor and how long have you been in the auditor's office?

A. I have been auditor since May, 1893. I have been in the auditor's office since May, 1885.

Q. What are your duties as auditor and what were your duties previous to that time?

A. My duties as auditor are to examine and audit all the accounts

of the company. My duties previous to my appointment as auditor were to check agents' accounts. I also acted as chief clerk to the auditor, and as such I had general supervision of all accounts passing through the department.

Q. Have you prepared a tabulated statement showing the earnings and expenses of the M. & C. R. R. on the railway portion of the Florence bridge for the years 1893–'4, 1894–'5, 1895–'6?

A. I have.

Q. Have you prepared tabulated statements showing gross earnings, expenses, and net earnings of the public portion of the Florence bridge for the same period?

A. I have.

Q. Have you prepared tabulated statements showing expense of operating, supervising, and maintaining the public portion of the toll-bridge for each of the fiscal years 1893–'4, 1894–'5, 1895–'6?

195 A. I have.

Q. Have you prepared statement showing the value and cost of the Florence bridge?

A. I have prepared a statement showing the amount expended in cash for the rebuilding of this bridge, and showing the approximate value of both the footway portion and the railway portion of the bridge.

Q. I will get you to make these statements which you have prepared a part of your deposition by making them your answer to this question and placing on the back of them the initials of your *manc* as a mark of identification.

(Defendants object to the question and the answer and exhibited statements because they are incompetent and are not the best proof which could be offered of the matters enquired about.)

A. The statements are made my answer to this question and are identified by the initials of my name endorsed thereon.

Q. State whether or not these tabulated statements which you have made exhibits to your testimony state correctly the matters of account and the correct estimate in regard to the various matters of accounts shown by the tabulated statements.

A. The statements included in the exhibits, so far as the gross earnings of the footway and the railway part of the bridge, are correct. The statement of expenses of both the railway and the footway are approximately correct. They are, however, to some degree compiled on the basis of mileage and gross earnings. The statement showing the valuation of the bridge shows the actual cash expended for the rebuilding of this bridge, and it shows the estimated value of the 15 piers that were not rebuilt. The valuation placed in this estimate I think is below the actual cost of rebuilding the 15 piers. The division of the cost as between the railroad part and the footway part of the bridge is based upon actual expenditures. All of these estimates and computations in these tabulated statements are taken from the books of account of the

196 railroad in the auditor's office and are correct.

Q. How did you arrive at the basis of your valuation of the 15 piers of the bridge?

A. In placing the valuation of these piers I was guided by the amount required to rebuild a new pier under this bridge.

Q. What difference is there, if any, in the material and the size and the construction of these new piers from the other 15 piers?

A. Well, as to that I cannot definitely state. To the best of my knowledge, the piers are about the same size and the material practically the same.

Q. Have you prepared an itemized statement showing the actual cost of construction of the improvements that were made in this bridge by the M. & C. R. R. Co. during the years 1889, 1890, 1891?

A. I have compiled such a statement.

Q. Look at the parer now shown you and state whether or not this is the itemized statement of that account, and, if so, make it a part of your answer to this question, placing on it your initials for identification.

A. The statement I now hold was prepared from the books of the M. & C. R. R., and shows the actual cost to the company for such improvements on the Florence bridge made during the years 1889, '90, '91, '92, and I file the statement as part of my answer to this question, identifying it by placing the initials of my name for identification.

Q. Look at the paper now shown you and state whether or not it is an itemized statement showing the expenditures by the M. & C. R. R. Co. from July, 1892, to January, 1895, for improvements on this bridge?

A. The statement now in my hands shows an itemized account of the expenditures by the receivers on account of the M. & C. R. R. Co. on the improvement of this bridge during the period specified, and I file the same as a part of my deposition, with the initials of my name placed thereon for identification.

197 Q. State whether these itemized statements, which you have made exhibits to your deposition, are correct.

A. These statements are taken from the books of the company and from the books of the receivers and are, to the best of my knowledge and belief, correct.

Q. Do they or not show correctly the expenditures actually made by the M. & C. R. R. and its receivers in the improvements on this bridge?

A. They do.

Q. In the assessors' estimation of the value of the footway portion of this bridge in the contract with the Nashville, Florence & Sheffield railway, state what the proportion of the assessed valuation of the entire bridge that was placed to the amount of this footway.

A. When the contract was made with the Nashville, Florence and Sheffield railway the valuation of the foot and wagon way of the bridge was placed at 22.2% of the total fixed value. It was also agreed that when any other improvements were placed upon the bridge the same proportion would be applied to the footway; that the footway would represent 22.2% of the total cost or value of the bridge.

Q. This estimate, then, was made not in reference to the actual

cost of that portion of the bridge, but was an arbitrary assessment, which was agreed upon as the basis of the contract between the parties, was it not?

A. The actual expenses on this bridge would indicate that to be the case, and that the 22.2% did not represent the true value of the footway part of the bridge.

Q. Is it not a fact that in these tabulated statements which you have made exhibits to your deposition you adopted this assessment made by this contract in your estimates?

A. I did.

Q. If in these estimates of yours in these tabulated statements you had adopted as the basis the actual costs of the footway portion of the bridge, would it or not have shown an amount of loss to the railroad in the operation of the footway portion of the bridge largely in excess of what is shown by these statements?

198 A. It would have shown largely in excess.

Q. Is it not a fact that the M. & C. R. R. prior to the receivership and the receivers since they have been operating the road have operated this bridge at an actual loss to the company and the owners of the property?

(Defendants object to this question and answer because it states a conclusion and not a fact. The figures give the facts.)

A. Taking into consideration the fixed charges and the cost of maintaining and operating, the statements show that the bridge has been operated at a loss.

Q. Is it or not a fact that from the present and past volume of business of this road in the operating of this bridge and if the schedule of rates established by the special act of the General Assembly of Alabama in regard to the footway portion of this bridge were put into effect that the operation of this portion of the bridge would be at an actual loss to the owners of the property?

(Defendants object to this question and answer because it states a conclusion and not a fact.)

A. It is my opinion that there would be considerable loss from operation, as the reduction in rates, as I understand it, is about 50%, and I do not think the travel would be increased to anything like that amount by the reduction.

Q. Would the rates prescribed by this act of the legislature, taking into consideration the present volume of business, pay the cost of the service, the cost of appliances and keeping the road in proper condition, and the fixed charges?

(Defendants object to this question and answer.)

A. In my opinion it would.

Q. Upon what is your opinion upon these last two questions based?

A. From my knowledge of the situation at Florence and the surrounding country, I do not think there would be enough business

to justify an increase of 50 % in the travel over the Florence bridge.

199 Q. Taking into consideration the present actual volume of business, as you know it to be, of the operation of this bridge by the receivers of this road, would the earnings be sufficient under the rates fixed by this act of the legislature from this footway to pay these charges, pay for the service and keeping up the bridge?

A. It would not.

Cross-examination.

Examination by W. J. Wood, Esq.:

Q. Mr. Plant, what is the value of this bridge?

A. You mean the valuation of the entire bridge?

Q. Yes; I mean the value of the bridge across the Tennessee river at Florence.

A. The value of the bridge as fixed by the assessors——

Q. I did not ask you that. What is your opinion of the value of the bridge?

A. I can answer by referring to my statement. The bridge is valued at about $259,000.00.

Q. What is the value of the railroad portion of the bridge?

A. The value of the railroad portion of the bridge is about $179,000.00.

Q. Then what is the value of the thoroughfare part?

A. Well, now, as to that, the value of the thoroughfare part of the bridge, I cannot give you a definate answer; I can use only the figures as given in the estimates made by the assessor; that valuation was placed at about $51,000.00.

Q. You are the auditor of the Memphis & Charleston railroad?

A. I am.

Q. And have expressed an opinion, under certain conditions, whether or not this bridge would be operated at a loss or a profit, and now I ask you to give me your opinion of the value of the thoroughfare portion of the bridge?

A. Well, my opinion as to the real value of the wagonway part of the bridge would be about $176,000—that is to say, if the bridge was to be rebuilt for a wagon and foot bridge it would cost about $176,000 to replace the same kind of a bridge there for the use of foot passengers, exclusive of the railroad.

Q. Then what is the value of the railroad portion of the bridge?

200 A. Judging from my experience in handling the costs of bridges and knowledge of bridges, I would say that it would cost in the neighborhood of $176,000.00 to build a wagon and foot bridge like the one now at Florence, exclusive of the railroad part.

Q. In making the contract between the Louisville & Nashville and the Memphis & Charleston in reference to the use of this bridge, there was an assessment made of the value of the two properties, was there not?

A. There was.

Q. How was it fixed in that assessment?

A. As I understand the contract that was made, it was agreed by the engineers of the two lines to fix the value at 22.2% for the footway part of the bridge; the remainder was to be the value of the railroad part of the bridge.

Q. And that assessment made the total value at $250,000.00. Is that the amount?

A. No.

Q. What is the amount?

A. At the time *of* the contract was made the bridge was not completed and they fixed it at $118,000. Subsequently the receivers of the M. & C. spent about $118,000 in further improvements upon this bridge. This added to the value placed upon the bridge by the assessors made the value about $230,000. This covered everything except about 15 old piers that were not rebuilt. I estimate the value of these old piers at about $4,000 each, making in all about $60,000 for the 15 piers.

Q. Now, in reference to the value of the piers, I hand you the minutes of the Memphis & Charleston R. R. and desire you to look at the same and state, from an inspection of said minutes, what the total value of the piers were in the bridge on the original construction of the masonry.

A. The amount in these minutes as to masonry shows the total $29,900. I notice further down this report there is reference to engineering, contingencies, old piers and bridges, and franchises. The reference to old piers and the reference to engineering would certainly effect the amount placed opposite masonry.

201 Q. You stated that this bridge would be operated at a loss considering the fixed charges of the M. & C. Is it not a fact that this road is in the hands of receivers?

A. Yes.

Q. Can you tell me what the fixed charges are per mile of railway?

A. The bonded debt on the entire line is $5,524,000.00.

Q. How much per mile?

A. About $20,000 a mile.

Q. I hold in my hands a statement of earnings and expenses of the M. & C. R. R. on the Florence Bridge Railway part. You say therein that the earnings from the traffic over the bridge for the year 1895-'6 is $870.46. In making your statement did you take this mile embraced by the bridge just as you took any other mile of the railroad?

A. I used the actual distance across the bridge, 2,614 feet.

Q. In estimating the cost of the bridge?

A. I used the actual distance of the bridge.

Q. Then, I understand your statement to mean your earnings from traffic over 2,614 feet of railway were $870.46?

A. The amount of $870.46 shows, according to my figures, the amount of earnings that accrued to the bridge at Florence based upon the actual distance hauled. This includes only the traffic hauled by the M. & C.

Q. Will you tell me what was the cost of constructing any mile of a railway of the Memphis & Charleston R. R. which has no bridge upon it?

A. I cannot. The cost of construction varies according to the nature of the country through which the road passes.

Q. It is true, however, that the cost of a mile of railway like the mile that includes the Florence bridge would be 10 or 20 % greater than the cost of a mile upon which there is no bridge?

A. I am incompetent to answer that question; am not familiar enough with engineering to answer you intelligently on that point.

Q. You have stated that the value of this bridge is $279,000.00, and that this bridge is about a half mile long. Then, the cost of this particular mile of railroad including the bridge would
202 be the cost of the bridge and enough additional distance to make up a mile of railroad? Is that true?

A. Well, on that basis, if the valuation of the bridge is $279,000.00 and it is only half a mile long, on the same basis it would cost twice as much for one mile of track.

Q. In your statement of earnings and expenses of the railroad part of the Florence bridge you gave the rental at $5,369.52; that accrued from the lease to the Nashville, Florence & Sheffield R. R., did it not?

A. That is the amount paid by the N., F. & S. R. R. that accrued to the bridge for the fiscal year 1895–'6.

Q. For the same period, then, all the M. & C. Company paid for the use of the bridge was, according to your statement, $870.46 for traffic? Is that true?

A. You mean under the statement?

Q. That all the M. & C. R. R. paid of the business end was worth to them only $870.46.

A. The M. & C. earned $870.46 from its traffic during that period, and they earned from the lease to the L. & N. $5,369.52.

Q. Did you have charge of the accounts and all of the papers and minutes of the M. & C. R. R. Co.?

A. I have charge of all the accounts and all papers pertaining to the accounts, but not of the minutes.

Q. Have you got in your charge, made by E. Thatcher, apportionment of the value of the railway, foot and wagon way part of the bridge?

A. That apportionment was filed with the general superintendent and is attached to the copy of the contract and made a part of Mr. Pegram's deposition.

Q. I will ask you to look at the 6th article of the contract between the M. & C. R. R. and the L. & N. Company. How does that provide that the expense of maintaining the bridge shall be paid?

A. It provides that the expense for maintaining the railroad part of the bridge shall be divided between the two companies on the basis of the number of cars passed over the bridge by each company.

Q. Do you mean to say that in addition to the rental paid
203 you by the N., F. & S. R. R. they also pay the cost of maintaining the bridge according to wheelage?

A. They pay their proportion of maintaining the railroad part of the bridge on a wheelage basis.

Q. Then you get the rental clear?

A. I cannot say that we get it clear.

Q. From that contract with them, is it not true?

A. We get a monthly rental from them, based upon the value of the bridge.

Q. That is paid to you in money, and, besides that, they pay a certain part of the expenses?

A. Yes.

Q. You keep the expenses of the bridge. What was their portion of the wheelage over the bridge for the year 1895–'6?

A. It varies, and I cannot give it to you from recollection. It varies to such an extent I don't suppose there are two months in the year that it would be anything like the same.

Q. For 1894–'5?

A. No.

Q. For 1893–'4?

A. No; I cannot.

Q. Then you are not prepared to state what portion of the costs of maintaining this bridge they pay?

A. No; I cannot tell. These statements are prepared monthly, and we make no yearly account of this expense. It might be for one month 50 % and the next month 40 % and 60 %, and the next 25 % and 75 %. They necessarily vary greatly each month. It depends entirely on the number of cars hauled by each company and the amount of work done on the bridge.

Q. I want you to take this statement for '95–'6 and help me to get at the earnings of the bridge for this year. You say that you got $870.46 for traffic of the M. & C.; that was net, was it not?

A. What do you mean by net in that connection?

Q. I mean that these figures represent the gross earnings from traffic received by the M. & C. Now, then, you also got from the L. & N. $5,369.52; is that true?

A. According to my statement that is true.

Q. Well, now, the gross earnings of the Florence bridge for
204 that period, according to your statement of the gross earnings of the foot-bridge, were $4,414.54; is that true?

A. Yes; the gross earnings of the foot and wagon way part of the bridge for the year 1895–'6, as per my statement, were $4,414.54.

Q. Then you would make the gross earnings for the entire bridge for that year—I have added these figures together—$10,654.62; is that correct?

A. I would make it $10,654.52.

Q. You stated a while ago that sometime the wheelage of the two companies would be 50 % to each, sometimes more than that, and sometimes less. I ask you now can you tell me why it is that the use of that bridge is worth $5,369.52, the railroad part to the L. & N., and yet is worth only $870.46 to the M. & C.?

A. Well, in answer to that question I would say that the L. & N. does not participate in the earnings from the foot and wagon part

of the bridge, and, while our earnings from traffic were only $870.46, we also show that we earned from the foot and wagon way $4,414.54.

Q. Your answer is not responsive to the question. My question refers entirely to the railroad traffic and earnings. I asked you if you could, as a railroad man, tell me why it is that on the railroad part of the bridge the N., F. & S. R. R. would pay $5,369.52 for the traffic, net to you, paid that to you, and from this statement it is worth only $870.46 for the traffic over it to the M. & C.

A. Well, I wish to say that your question is misleading. The amount that we receive from traffic over this bridge, $870.46, does not show the entire revenue the M. & C. R. R. gets of the business passing over this bridge. This $870.46 is only the revenue accruing over the bridge proper. We may have hauled all of this traffic the full length of our road. It may have netted perhaps $10,000.00. The L. & N. road pay $5,369.52 for the privilege of using this bridge to haul their traffic to and from Sheffield. They might realize out of this traffic fifteen or twenty thousand dollars. Therefore it
205 is well worth to them the payment of this rental. In paying this rental they are enabled to haul traffic from Sheffield to St. Louis, Louisville, and Cincinnati, out of which they get full revenue from Sheffield to these parts; therefore it would appear that they could very well afford to pay this rental.

Q. Then for traffic starting from Florence or coming to you from north of the river you get a revenue that might be equal to the revenue that the L. & N. gets?

A. It depends entirely on the destination.

Q. Well, it might be equal?

A. No; because I would say, roughly estimating 75 % of the freight the L. & N. hauls over the bridge, they get twice as much hauling out of it as we do. Therefore, upon equal rates, they would receive twice the revenue that we would for traffic passing over the bridge. To illustrate my point, business passing over the Florence bridge from and to Florence travels over only one-half of the entire line of the M. & C., about 150 miles, while traffic passing over the bridge from Sheffield on the L. & N. might travel the entire distance of their line. It might travel from Sheffield to St. Louis, it might go to Cincinnati, and a large portion of the business hauled over this bridge by them is pig-iron, which travels the full length of their line, therefore they would get a greater amount of revenue than we would.

Q. Are there not two furnaces on the north side and five on the south side of the river?

A. I am not familiar with the location of the furnaces.

Q. Do you charge as much for hauling a car over any other mile of the railroad as you do over the mile of railroad which includes the Florence bridge?

A. That is a very difficult question to answer.

Q. Well, can't you answer it?

A. Well, most of the traffic that the M. & C. hauls over this bridge into and out of Florence is competitive traffic, and the
206 rates governing this traffic are made to compete with other lines, therefore our rates are rather low, and, in my opinion,

they would not compare with other rates over other parts of the road.

Q. Then, perhaps, you get less. Can you state that you get less?

A. I cannot state it definitely.

Q. Now, I want to ask you especially what you charge to switch a car of coal from Sheffield to Florence.

A. I cannot tell you. I am not familiar with the rates without referring to my file. I will say, however, in answer to that question, that the switching of coal forms a very small part of our business over the bridge.

Q. But you can't answer what you charge for a car of coal?

A. I cannot.

Q. Well, now, don't you charge $5.00?

A. I cannot tell you.

Q. Then if you do charge $5.00 to haul it, is that more or less than you charge upon any other part of the road per mile?

A. I can't answer your question without reference to my file. The rates vary to such an extent that I could not answer you intelligently.

Q. Can you tell me what you charge to switch a car from Tuscumbia to Florence—a car-load, say, of corn?

A. I cannot answer to the rates of any of the commodities without reference to my files.

Q. You state here in your statement of the expense of operating, supervising, and maintaining the Florence foot and wagon bridge you estimate that the flooring of the footway has to be renewed every five years. Do you renew it every five or four years, or can you say?

A. It is the opinion of experts on this matter that it would be necessary to renew the flooring of this bridge every four years, but in this compilation of expenses I placed the limit at five years, giving it a year more than the opinion of the experts on this matter.

Q. Refer now again to your statement of earnings and expenses of the railroad part of the Florence bridge. You state that, allowing $870.46 for the traffic of the M. & C., that they paid for
207 the year 1895–'6 2.5 % interest. Is that correct?

A. According to my compilation these figures are correct.

Q. And for the same year, refer now to gross earnings, expenses, and net earnings of the Florence foot-bridge, the rate of interest paid by the footway part of the bridge for the same year is 4.2% ; is that correct?

A. That is correct.

Q. Refer now to your statement of expenses of operating, supervising, & maintaining Florence foot and wagon bridge for 1895–'6. In making this statement, have you not charged this bridge with a portion of the salary of the roadmaster and the sup'r of bridges & buildings?

A. I have.

Q. Have you not also charged it with the expense of general supervisor, taxes, and general expenses?

A. I have; but in my charge for general expenses I have not included the salary of roadmaster, supervisor of bridges, and supervisor of track.

Q. Refer now to your statement of the value of the foot & road way part of the bridge in which you give the total value of the footway. It is true, is it not, that if you were building a footway bridge the piers would not be as heavy and as many as those that you have there?

A. Well, it is my opinion that to make a substantial bridge across the river at this point the superstructure, to make it perfectly safe, would have to be of equal strength of the present piers.

Q. Do you mean to say that the substructure for a roadway bridge only carrying wagons, carriages, and persons, whose weight would only be three or four tons, would have to be as heavy as a bridge to carry only engines and cars, whose weight would be from seventy to a hundred tons?

A. Ordinarily, probably not; but to make the brdige perfectly safe and secure and build it to hold up the iron structure now on these piers, in my opinion the substructure would have to be
208 equally as strong and expensive as the present piers under the bridge.

Q. Would the superstructure have to be as heavy?

A. Not necessarily.

Q. I will ask you now to look at your accounts in your office and make from them a statement of the wheelage of the N., F. & S. R. R. and the M. & C. R. R. over the railroad part of the Florence bridge for the fiscal years 1893–'4, 1894–'5, 1895–'6, and make it a part of your deposition and mark it with the initials of your name as means of identification.

A. I will.

Capt. HUMES:

Q. How long has the Memphis and Charleston R. R. been in the hands of these receivers?

A. Since July, 1892.

Q. Now, during that time have the earnings from the business of the road been sufficient to pay the cost of maintaining it and the fixed charges?

A. They have not.

Q. Is it not a fact that these receivers, in the operation of the road during their management of it, have had to borrow money to meet the liabilities incurred by them in keeping the road up and open to travel?

(Defendant objects to that question and answer; it has nothing to do with the value of the bridge.)

A. I cannot say that they have had to borrow money, but they have bought equipment and material on credit.

(Signed) A. H. PLANT.

99 Florence bridge in account with Memphis & Charleston Railroad Co.—C. M. McGhee and Henry Fink, receivers.

	Debit.			Debit.	
1892.			1893.		
July.	Sal'y engineer	26 65		Brought up	$10,042 64
	Bd'ge gang, false w'k	2 50	Jan'y.	Fr't chgs., mat'l	239 57
Aug.	Sal'y engineer	80 00		Estimate on piers	985 97
	Making false w'k	195 05		Inspecting mat'l	225 00
	Driving piles	36 00		Sal'y engineer	80 00
	Fr't chgs. on stone	28 55		Labor on bents	52 50
Sept.	Sal'y engineer	80 00	Feb'y.	Inspecting	203 75
	False w-rk	140 45		Estimate on bridge	15,124 57
	Fr't chgs. on stone	424 01		Do.	18,234 43
	Do.	71 31		Sal. engineer	80 00
Oct.	Sal'y engineer	80 00		B'dge masonry, etc.	110 00
	False work	31 70		Fr't chgs. on mat'l	58 25
	New piers	2,488 43	M'ch.	Final est. on piers	2,740 49
	Fr't chgs., stone, etc.	235 01		Lumber and mtl	1,298 16
Nov.	Sal. engineer	80 00		Fr't chgs. on "	43 04
	False work	68 40		Sal. engineer	38 70
	Fr't chgs., stone	284 55	Ap'l.	Superstructure	7,071 05
	Do.	213 42		Fr't chgs., mat'l	1 10
	Inspecting mat'l	145 00	May.	Superstructure	17,891 43
Dec.	Sal. engineer	80 00		Inspection	330 00
	False work	110 55		Material, etc	816 14
	Lumber, etc	524 50	June.	Labor on appchs	156 20
	Fr't chgs., material	461 83		Labor & mat., appchs.	352 36
	" " lumber	481 99	July.	Final estimate	21,178 52
	Building new piers	3,672 74		Labor, appchs.	36 80
				Fr't chgs. on mat'l	892 26
	Carried up	$10,042 64		Carried up	98,282 93

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1893.	Debit.		1893.	Credit.	
	Brought up	$98,282 93	Ap'l.	Acc't on material	$222 57
Aug.	Labor on appchs	38 05	June.	Do. do.	45 84
Sept.	Steel bars	56 26	M'ch.	Old mat'l removed	1,556 86
	Inspection	62 50		Acc't lumber	42 24
	Survey for appchs	1 50		Balance	111,732 97
	Labor on do.	456 50			
	Paid for piling	66 00			
	Sal'y engineer	19 80			
Oct.	Cement	11 40			
	Inspection	5 00			
1894.					
Jan'y.	Fr't chgs. on lumber	25 27			
	Ex. engineer's ofs	40			
Feb'y.	Lumber	117 72			
	Inspecting	95 00			
	1 pc. capping	7 50			
M'ch.	Dressing curbing	32 25			
	Material for appchs.	63 25			
	Wages, labor, etc.	385 38			
Ap'l.	Paid for appchs	13,223 10			
	Labor on same	114 95			
	Cement	14 30			
	Supplies	3 00			
	Fr't chgs.	331 32			
June.	Expenses engineer	1 00			
Oct.	Fr't chgs. on steel	115 00			
Dec.	Labor & mat. on piers.	58 25			
1895.					
Jan'y.	Labor on piers	12 85			
		$113,600 48			$113,600 48

211 *Recapitulation.*

	Foot bridge.	R. R. bridge.	Total.
Value assessed	26,278 62	92,093 52	118,372 14
Improvements under new contract	24,804 72	86,928 25	111,732 97
Other property	.....	24,139 18	24,139 18

This amount does not represent the actual value of the railway part of bridge, but is a sum to be deducted from assessed value of the entire bridge to arrive at a valuation of R. R. bridge to give the M. & C. R. R. a reasonable rental.

		All property,	203,160 95	254,244 29
Total value to date, 1, 5, '97	51,083 34	Bridge,	179,021 79	230,105 11
Value of foot bridge	.....		.....	51,083 34
Interest one year, 8 %	$4,086 67			
Gross earnings from foot bridge 1894–'5.	.....		$3,458 52	
1895–'6.	.....		4,414 54	
Average for past four years	.....		3,782 62	

L. & N. rental for bridge proper: 6 % of ½ of $179,021.77 for one month; gross, $447.55, or yearly gross, $5,370.65.

212 Florence bridge in account with the Memphis & Charleston Railroad Company.

1889.	Debit.		1890.	Debit.	
May.	Advertising	4 80		Brought up	18,982 73
	"	2 30	June.	Lumber	29 05
June.	"	3 60		"	381 60
July.	Stone	972 00		Fr't chgs	72 62
Oct.	"	918 00		"	84 70
	Masonry-work	2,948 04		Lumber	564 52
Nov.	"	3,231 34	July.	Iron-work	25,037 50
	Incidentals	1 25		Removing piers	487 17
	Stone	286 60		Inspection	145 00
Dec.	Masonry	3,390 52		Fr't chgs	40
	Advertising	6 00		Leveling masonry	30 00
1890.				Labor	390 80
Jan'y.	Sal'y engineer	150 00		Removing pier	556 92
	Expense "	15 00		1 bale oakum	4 25
	Masonry	3,412 16		Lumber	91 59
	Inspector's sal'y.	90 00		"	1,526 28
M'ch.	Inspection	117 50		"	141 36
Apr.	"	55 00		"	59 03
May.	"	120 00		"	434 00
	Transportation chgs.	5 50		Fr't chgs	201 35
	Lumber	76 03		"	239 93
	"	15 36	Aug.	Boat service	25 00
	Labor	216 90		Removing piers	501 30
	"	589 80		Bolts & spikes	431 17
June.	Labor	241 40		Labor	665 60
	Inspection	220 00		Lumber	380 64
	Lumber	329 30		"	931 28
	Fr't chgs. on lumber.	1,564 33			
	Carried up	18,982 73		Carried up	52,395 79

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1890.			1891.		
	Brought up	52,395 79		Brought up	84,484 19
Aug.	Fr't chgs	580 56	Jan'y.	Fr't charges	84 50
	"	24 19		Labor	613 65
Sept.	"	10 00		Replacing piers	845 64
	Labor	960 15		Drainage on piles	2 89

	Repr. to abutments..	46 18	Feb'y.	Labor.....	462 15
	Spikes.....	28 60		Iron rope.....	56 97
	Fr't chgs.....	1 75		Fr't charges.....	2 70
	Lumber.....	15 30	M'ch.	Labor.....	198 05
	"	96 94	Apr.	"	221 35
	Mtl. Memphis shop..	1 00	May.	"	16 45
Oct.	Lumber.....	56 41	Dec.	Ex. inspector.....	3 50
	"	327 60		Lumber.....	103 95
	"	119 70		Bal. due on iron-w'k.	498 01
	Labor.....	664 90	1892.		
Nov.	Mtl. and labor.....	236 00	Oct.	Labor.....	15 28
	Labor.....	411 60		Final settlement of bridge-work.....	569 61
	Iron-work, etc.....	27,684 13			
	Lumber.....	106 40			$88,178 89
	Fr't charges.....	179 56			
	"	2 26		To balance due M. & C. R. R. Co.....	$87,751 36
Dec.	Labor.....	502 75			
	Bill for black, etc...	6 80			
	1 tarpaulin.....	1 50			
	Fr't charges.....	5 14			
	Lumber.....	18 95			
	Carried up....	84,484 19			

214

CREDIT.

1890.			
M'ch.	By overcharged freight.		44 44
June.	"	"	109 50
July.	"	"	30 22
Sept.	"	"	153 02
Oct.	"	"	69 88
Nov.	"	"	20 47
	Balance.....		87,751 36
			$88,178 89

Earnings and Expenses of the Memphis and Charleston Railroad on Florence Bridge, Railway Part.

These figures are arrived at as follows:

Earnings from traffic passing over the bridge, actual figures, reduced to a rate per mile, and such rate calculated for length of bridge, 2,614 feet.

Earnings from rental apportioned on basis of value of property used jointly by L. & N. and M. & C. R. R'ds.

From—	1893-'4.	1894-'5.	1895-'6.
Traffic.....	$1,208 61	820 79	870 46
Rental.....	5,020 16	5,368 30	5,369 52
Total gross.....	6,228 77	6,189 09	6,239 98
Operating expenses.....	1,607 61	1,564 87	1,601 93
Net.....	4,621 16	4,624 22	4,638 05
Interest on assessed value of railroad part, $179,021.78, @ 7 %.....	12,531 52	12,531 52	12,531 52
Loss.....	7,910 36	7,907 30	7,893 47
This part of the bridge has paid during this period the following rate of interest.....	2.5%	2.5%	2.5%

215 *Gross Earnings, Expenses, and Net Earnings of the Florence Foot Bridge at the Present Rate of Toll.*

	1893-'4.	1894-'5.	1895-'6.
Gross earnings	3,113 71	3,458 52	4,414 54
Expenses	2,299 16	2,219 90	2,268 63
Net	814 55	1,238 62	2,146 31
Interest at 7 % on cost of bridge, as per relative value fixed by L. & M. and M. & C. R. R. assessors, 77.8 % railway, 22.2 % footway	$3,575 83	$3,575 83	$3,575 83
Loss	2,761 28	2,337 21	1,429 52
Rate of interest earned	1.6%	2.4%	4.2%
Earnings at rate of toll proposed:			
Gross	$1,556 86	$1,729 26	$2,207 27
Expenses	2,299 16	2,219 90	2,268 23
Loss	742 30	490 64	60 96
Interest as above	3,575 83	3,575 83	3,575 83
Net loss	$4,318 13	$4,066 47	$3,636 79

216 *Expenses Operating, Supervising, and Maintaining Florence Foot and Wagon Bridge*, 1893-'4.

Salaries:				
Roadmaster	$1,650 00			
Supr. bridges and buildings	1,201 50			
292 miles track	2,851 50	Bridge,	4 49	
Supervisor track, 100 miles	990 00	"	4 90	
Engineer for draw			513 00	
Oil, waste, lamps, and other supplies			31 52	
Labor and material on bridges and tracks, $1,404.61, 2 miles 445 feet		Bridge,	333 63	
Footway proportion, 22.2 % of			887 54	197 03
Salary day toll-keeper				513 00
Salary night toll-keeper				513 00
				$1,223 03
Renewals and painting:				
Flooring footway, to be renewed every five years—				
100,000 ft. lumber @ $12	$1,200 00			
Labor, nails, etc.	430 00			
One-fifth of	1,630 00		326 00	
Painting, necessary every three years, one-half chargeable to footway, cost $1,500.00, one-half for one year			250 00	
				576 00
				$1,799 03
General supervision, taxes, etc., based upon earnings:				
Total general expenses	$204,971 23			
Gross earnings, entire line	1,274,817 78			
Gross earnings, footway	3,113 71	or .244 %		
.244 % of $204,971.23				500 13
Total expenses foot and wagon way				$2,299 16

217 *Expenses Operating, Supervising, and Maintaining Florence Foot and Wagon Bridge*, 1894–'5.

Salaries:				
Roadmaster	1.620 00			
Supr. bridges and buildings	1,242 00			
292 miles track	2,862 00	Bridge,	4 85	
Supervisor track, 100 miles	970 00		4 81	
Engineer for draw	.....		486 00	
Oil, waste, coal, etc	.....		22 63	
Labor and material on bridge and tracks, $592.39, 2 miles 445 feet	.....	Bridge,	140 71	
Footway proportion, 22.2 % of	.....		659 00	146 30
Salary day toll-keeper	.....		....	486 00
Salary night toll-keeper	.....		....	486 00
				$1,118 30
Renewals and painting:				
Flooring footway, to be renewed every 5 years—				
100,000 feet of lumber @ $12		$1,200 00		
Labor, nails, etc		430 00		
One-fifth of		1,630 00	326 00	
Painting, necessary every three years, one-half chargable to footway, cost $1,500.00, one-half for one year		.....	250 00	
				576 00
				$1,694 30
General supervision, taxes, etc., based on earnings:				
Total general expenses		$154,351 95		
Gross earnings, entire line		1,202,272 58		
Gross earnings, foot bridge		3,458 52 or .288 %		
				525 60
				$2,219 60

218 *Expenses Operating, Supervising, and Maintaining Florence Foot and Wagon Bridge*, 1895–'6.

Salaries:				
Roadmaster	$1,620 00			
Sup't bridges and buildings	1,242 00			
292 miles of track	2,862 00	Bridge,	4 85	
Supervisor track, 100 miles	970 00	"	4 81	
Engineer for draw	.....		486 00	
Oil, waste, lamps, coal, etc	.....		19 26	
Labor and material on bridge and track, $1,028.22, 2 miles 445 feet	.....	Bridge,	244 23	
Footway proportion, 22.2 % of	.....		759 15	168 53
Salary day toll-keeper	.....		....	486 00
Salary night toll-keeper	.....		....	486 00
				$1,140 00

Renewals and painting:			
Flooring and footway, to be renewed every 5 years—			
100,000 feet lumber @ $12	$1,200 00		
Labor, nails, etc	430 00		
One-fifth of	$1,630 00	326 00	
Painting, necessary every 3 years, one-half charg-able to footway, cost $1,500.00, one-half for 1 year		250 00	
			576 00
			$1,716 53
General supervision, taxes, etc., based on earnings:			
Total general expenses	$231,808 27		
Gross earnings, entire line	1,348,538 31		
Gross earnings, foot bridge	4,414 54	of .328 %	
.328 % of $231,808.27			551 70
			$2,268 23

Undivided expenses between footway and railway are prorated on basis fixed by the assessors appointed by the L. & N. and M. & C. R. R'ds, which gives 22.2 % for footway. This valuation is not a true basis as per relative values of the cost of the two highways, but it is used as a conservative basis for arriving at the expenses of the footway.

219 *Value of Bridge.*

When the assessment was made fixing the rental to be paid by the L. & N. R. R. for trackage rights over this bridge, the total value of the bridge at this time, 1891–'2, was fixed at	$118,372 14
Since that time the receivers have spent for additional improvements	111,732 97
Total value today	$230,105 11

It was determined by the assessors that of this amount 22.2 % should be apportioned to the foot and wagon way—$230,105.11, less 22 2 %, $179,021.78, the assumed value of the railway part, and $51,083.33, the assumed value of the foot and railway part. These figures are used in determining the interest on earnings.

Whole the above figures show the assessed value of the bridge, they do not represent its cost or actual value. As an illustration,

just prior to the assessment there was expended for draw	$87,551 36
Since that time the old part- of the bridge, except about 15 piers, have been replaced by a modern steel structure at a cost of	$111,732 97
Making in all	199,484 33
Add to this the present value of the 15 piers	60,000 00
And we have	$259,484 33

which amount represents more accurately the present value of the bridge.

Of the total expenditure of $199,484.33, $33,000.00 was paid for substructure, leaving $166,484.33 for superstructure. Using the actual cash paid for rebuilding the bridge and the estimated cost of the 15 old piers not rebuilt, we have:

For substructure	$93,000 00
For superstructure	166,484 33
Total	$259,484 33

220 *Value of Foot and Road Way Part of Bridge.*

In calculating the earnings and expenses of this part of the bridge the value as fixed by the assessor is used. These values are as follows:

Estimated value	$230,105 11
22.2 % for footway	51,083 33

This, however, does not represent the true value or cost of the footway of this bridge. To construct a safe foot and wagon way bridge of same material as the present combination bridge, the substructure would have to be equally as strong and as costly as the present work. As an evidence of this fact, some of the old piers now used were constructed for the original wagon bridge. It is estimated that only 33 % should be deducted from the superstructure of the present combination bridge to arrive at the true value of the foot and wagon part.

However, as a conservative estimate we deduct 50 % of cost of superstructure and have the following valuation:

Substructure	$93,000 00	
Superstructure (50 % of $166,484.33)	83,242 16	
Total value of footway	$176,242 33	
Interest, 7 % per annum		$12,336 95
Average annual gross earnings foot bridge for past three years at present toll rate		3,662 25
At proposed rates		8,831 12

Statement of Wheelage over the Florence Bridge.

	1893–'4.	1894–'5.	1895–'6.
L. & N. cars	4,421	5,858	15,310
M. & C. cars	5,811	5,613	6,524
Total	10,232	11,471	21,834

221 *Deposition of R. B. Pegram, General Superintendent of the Memphis and Charleston Railroad Company, Taken Jan. 1st, 1887.*

Examination by Mr. O'NEAL:

Q. Who was the contractor that built the present bridge across the river at Florence?

A. I could not tell you.

Q. Was it built by the road or by contract?

A. Both by contract and by the railroad Co.

Q. Is there any record of it in your office showing who built it?

A. Yes, sir; the vouchers would show who the money was paid to.

Q. The present bridge is an iron structure?

A. It is a steel structure and was built in lieu of the old wooden bridge that was there.

Q. When was the present bridge constructed—about how many years ago?

A. I think the draw about six years and the bridge about four.

Q. The bridge you say was built by the Edgemore and the Detroit Bridge Cos.?

A. Yes.

Q. Did the road have any contract with them as to the construction of the bridge; if so, have you the contract?

A. Yes; I have a copy of it.

Q. Will you attach to your deposition a copy of the contract?

A. Yes.

Q. Then I will ask you to attach to your deposition a copy of this contract and also a statement from your books showing the amounts expended—the full costs of the bridge?

A. Yes, sir.

Q. Do you know how much that road is assessed for taxes from Florence to Tuscumbia?

A. I am not certain, but I think that branch lines in Alabama are taxed eight thousand dollars a mile, but I do not know whether this is it or not. Mr. White can tell you.

Mr. WHITE: $7,500.00 a mile.

Q. Is there any additional assessment for the bridge?

A. No; it is considered as part of the line.

222 Q. Have you a copy of the contract between the Memphis & Charleston railroad and the Louisville & Nashville railroad in regard to the use of this bridge?

A. I have.

Q. Is the copy from the original?

A. Yes.

Q. Will you please attach as an exhibit to your deposition the contract between the Louisville & Nashville R. R., or rather the Nashville, Florence & Sheffield R. R., as it is called, and the Memphis & Charleston R. R. in regard to the Florence bridge?

A. Yes, sir; and I mark it or endorse the same "Exhibit R. B. P."

Q. I see from this Schedule A attached to this contract the present value of the bridge is put at $118,372.14?

A. Yes, sir.

Q. Can you state what amount of rental is paid by the Nashville, Florence and Tuscumbia R. R. to the Memphis & Charleston R. R. for the use of this bridge?

A. Yes, sir.

Q. Can you state from recollection or do you have to refer to your books?

A. I can state it approximately, $507.90 a month; about $500 a month, I should say.

Q. Does that include everything?

A. Yes, sir; they have absolute right to the road; that entitles them to compete with us.

Q. How many furnaces are there in Florence and Sheffield?

A. Seven.

Q. How many of these are now in operation?

A. There are practically two of them in operation, though they have been closed for the last four or five days on account of the holidays and the scarcity of material.

Q. Can you state what was the income from the roadway and foot part of the bridge for the last year, 1896?

A. No, sir; I cannot. I have not noticed it.

Q. Could you attach to your deposition a statement showing the gross income from the use of the public roadway part of the bridge for the past year, 1896?

223 A. Yes; I herewith attach it, marking the same "Exhibit M. H."

Q. Will you also attach to your deposition a statement showing the *the* earnings of the toll-bridge at Florence for the year 1895?

A. Yes, sir; I mark the same "Exhibit L. H."

Q. The expenses to operate the toll-bridge at Florence are the same now as they were when your former deposition was taken?

A. Yes, sir; the fixed charges are about the same.

Q. You state in your former deposition that the old bridge was bought by the Memphis & Charleston R. R. Co., rebuilt, and made a foot and wagon bridge and railroad bridge combined. Do you know this from your own personal knowledge, and do you know what price they paid for it?

A. I do not; the record is the only authority.

Q. Is there a record of all this?

A. Yes, sir.

Q. Well, is it not a fact that there was no bridge across the Tennessee river at the time of the purchase by the M. & C. R. R.?

A. I do not know as to that.

Q. Well, hadn't the old bridge been burned?

A. I do not know except from the record.

Q. I see from this (former deposition) that you say, "The total earnings are $3,281.92 and the actual expenses $1,817.50 outside of the contingencies such as may be caused by accidents to persons, vehicles, or animals crossing the bridge, and the expense incurred

in reference to such contingencies leaves less $1,464.42 to pay taxes, insurance, and incidentals." Were the expenses mentioned solely the expenses of operating the toll portion of the bridge?

A. Yes, sir; it referred entirely to the toll portion of the bridge.

Q. Is it not rather difficult to seperate what constitutes the toll portion of the bridge and what constitutes the road bridge?

A. No.

Q. Of course, the larger portion of the income is from the railroad part?

A. Yes, sir; which ought not to be the case.

224 Q. Can you state what are the net earnings of the railroad from Florence to Tuscumbia per annum?

A. No; we do not keep a seperate account.

Q. Do you keep any account showing what are the earnings of the bridge outside of the rental which you receive?

A. No, sir.

Q. When you haul cars belonging to the other roads, do you make any charge?

A. No.

Q. Is there no charge for carrying the cars across the bridge?

A. No; we haul them just the same as over a mile of dirt track.

Q. Does the amount which the Louisville and Nashville R. R. pays to the M. & C. vary every month?

A. Very little.

Q. And you estimate the monthly rental at about $500.00, I believe you stated that?

—. Yes, sir.

Q. And that includes everything?

A. Yes, sir; they have every privilege of the bridge that we have.

Q. Then they pey you a fixed charge for every car?

A. No, sir; this rental covers everything.

Q. Well, under that contract the bridge, approaches, and tracks are fixed at $116,230.70 less the value of the bridge which is used as roadway and foot bridge?

A. That was an arbitrary value to fix the rental.

Q. Is it not a fact that that is about the value of the bridge?

A. No; we could not expect the road to pay us for the old masonry, etc. If the masonry had been new, this valuation would be very small; but we took the old bridge away, and the engineers of the two roads got together and finally agreed on a compromise.

Q. What is the value of the bridge, including the roadway; what would it cost to build it?

A. It would cost $250,000.00 or $300,000.00.

Q. Now, couldn't such a bridge be built for $200,000?

A. No, sir; here is the amount we paid for the superstructure—$199,484.32.

225 Q. Well, now, how do you estimate the value of the toll-bridge and the footway compared with the rest of the bridge?

A. We fixed it at an arbitrary value. The Louisville & Nashville R. R. did not want to pay for the foot-bridge. It is explained in said Schedule A to the contract.

Q. Now, does this valuation of the bridge mentioned in said Schedule A mean the old bridge or the new bridge?

A. That means the old bridge.

Q. How much do they value the toll part of the bridge?

A. 22.2 % of the total value of the bridge according to our L. & N. contract.

Q. The company paid $87,851.36 for the draw-bridge and the receivers paid $111,732.97, making a total of $199,584.30 the cost of the new bridge that is now across the river at Florence. That does not include what was there before. All that was left was the piers when you took the old bridge away?

A. Yes, sir.

Q. Do you know the value of the piers that were left?

A. Approximately, $4,000.00 each.

Q. I mean the piers that were left when the old bridge was taken down; those that were left you did not have to build?

A. $4,000; I would roughly estimate $4,000.00 a pier.

Q. How many were there?

A. 15 or 16.

Q. How many of these piers were rebuilt and included in the costs you have mentioned of the road?

A. I do not know; I could not say.

Q. Well, the fact is that you rebuilt all the piers?

A. What we did not rebuild we touched up, but there are some that have not been built entirely.

Q. What was the value of the material of the old bridge that was taken down?

A. Not much; hardly worth anything.

Q. Don't you think that under the present rate of toll as fixed by the legislature the tolls of the bridge would be largely increased?

A. No, sir; I do not.

226 Cross-examination of R. B. PEGRAM.

By Capt. HUMES:

Q. You are the general superintendant of the Memphis & Charleston R. R.?

A. Yes, sir.

Q. How long have you been general superintendant?

A. About two years.

Q. And prior to that time?

A. I was superintendant about 14 years and prior to that was master of trains for three years, nearly four.

Q. You have been connected in these official capacities for nearly twenty years?

A. Yes, sir.

Q. Have you examined the records of the office of the Memphis & Charleston railroad for the purpose of finding any papers showing how the M. & C. R. R. Co. acquired title from the Florence Bridge Company of this bridge and ferry privileges and franchises?

A. Yes, sir; I have examined the records as far as I could and I

understand that almost all of the old records of the company were destroyed during or just after the war, and the only reference I find to it is in the reports of the president and directors of the company to the stockholders.

Q. Then you have failed after dilegent search to find how the M. & C. R. R. Co. acquired and purchased the old Florence bridge franchise?

A. Yes, sir; except from said reports.

Q. The report of the president and directors of the M. & C. R. R. Co. made at the annual meeting of the stockholders in 1857 makes reference to the construction of this branch road to Tuscumbia & Florence, does it not, and to the construction of this bridge?

A. Yes, sir.

Q. Also the report of the president and directors of the M. & C. R. R. Co. made to the annual meeting of the stockholders in 1858 refers to it, does it not?

A. Yes, sir.

Q. And this report of 1858 refers to the report of the chief engineer of the road in regard to the construction of this branch, including the purchase of the bridge across the Tennessee river at Florence, does it not?

A. Yes, sir.

227 Q. What does the report of that engineer show as to the cost of this bridge and the cost of the purchase from the Florence Bridge Co. of the bridge and franchise?

A. (The witness makes these two reports of the president and directors and this report of the chief engineer an exhibit to his deposition as answer to this question, and it is agreed by counsel that the printed copies of these reports in books herewith filed, entitled "Minutes and reports of the M. & C. R. R.," shall be considered and treated as this exhibit.)

Q. During your official connection with the Memphis & Charleston R. R. is it not a fact that the same rates of toll have been charged that are now being charged for the use of the public toll-bridge at Florence?

A. I really cannot say. My best recollection is that the tolls have been the same. They were revised at one time, but I do not think the tolls were changed.

Q. Well, the Memphis & Charleston R. R. Co. during this period of your official connection with the road has been in the possession and use and enjoyment of this public toll-bridge and franchise and have been exercising the right to collect toll from people who cross there on foot and in vehicles?

A. Yes, sir.

Evidence of R. B. Pegram in Rebuttal.

By Mr. O'NEAL:

Q. Have the Memphis & Charleston Railroad Company any conveyance of any kind from the Florence Bridge Company? Did

they make any deed to the Memphis & Charleston R. R. Co. for the Florence bridge property?

A. There are no records except these reports.

Q. And you do not know of your own knowledge whether there ever was any deed made?

A. No, sir.

(The defendants object to the report of the engineer and the minutes of the Memphis & Charleston R. R. because the same are not legal evidence of any conveyance by the Florence Bridge Company to the Memphis & Charleston R. R. to the title of the said Florence bridge.)

(Signed) R. B. PEGRAM.

228 EXHIBIT TO DEPOSITION OF R. B. PEGRAM.

Contract between Edgemore Bridge Works & M. & C. R. R. Co.

This contract made and entered into on this twenty-sixth day of February, 1890, by and between the Edgemore Bridge Works of Edgemore Del., party of the first part, and the Memphis & Charleston Railroad Company, of the second part, witnesseth:

1. That the party of the first part agrees and binds itself to construct and erect for the said railroad company over the Tennessee river at Florence, Ala. a single-track railroad and a highway iron and steel, pin-connected draw-span, four hundred and twelve (412) feet long, pin center to pin center, including furnishing and connecting complete engine, boiler and turning apparatus, as well as necessary attachments for turning by hand. (The engine platform and engine-house to be furnished and placed by railroad company.)

2. Party of the first part agrees to take down so much of the present structure as now occupies the site of the new draw and pile the old material on bank, and to furnish, erect and maintain all false work necessary for erecting new work and for maintaining traffic operations, and to remove same when span is completed.

3. All material and workmanship shall be first class in every respect and such as shall be entirely satisfactory to the general manager and chief engineer of said railroad company, and shall be subject to the inspection of said railroad company's authorized representative.

4. The party of the first part agrees to construct and erect the whole work throughout in a first-class and workmanlike manner, and in accordance with the "Keystone specifications" except where specifically modified by approved strain sheet and proportion; same for two 92-ton E. T. V. & G. consolidation engines, followed by 3,000 pounds per lineal foot, as well as the distributed concentrated loads on highway floor.

5. All labor, tools and materials are to be furnished and provided by the party of the first part, except the railroad ties and guard-rail, and highway joists, planking and guard-rail, which the rail-
229 road company will furnish at site of bridge; but party of the first — will frame and secure all in place.

6. Said party of the first part will further agree to give all work one coat of best lead and oil at shops and another at site after erection.

7. Party of the first part agrees and binds itself to indemnify and save harmless the said railroad company from any and all damages by accidents that may occur by reason of the careless, negli-ent or improper manner in which said work is done, and all damages to and suspension in the traffic of said railroad company, or in any other operation of its road, by reason of the failure of said party of the first part to furnish proper apparatus to allow said operations to go on, or by reason of failure to do the work as herein contracted, or by reason of the carelessness or unskillful manner in which same may be done, for any of which the railroad company may or might be held liable.

8. The said party of the first part agrees and binds itself to deliver to said railroad company a bond in its favor for the sum of twenty-five thousand dollars ($25,000.00) for the full true and faithful performance of this contract and to protect said railroad company as herein agreed, as well as against all loss or liability from liens or other legal right or process attaching to said work or structure, or any part thereof.

9. Work on said structure is to be completed and the structure finished in all respects within six (6) months from date of acceptance of strain sheet for same.

10. In consideration of the above the party of the second part agrees to pay the party of the first part for said structure complete according to agreement, the sum of fifty thousand and seventy-five dollars, ($50,075.00), one-half of said sum when the material for said structure shall have been delivered at site of bridge, the other
230 half on completion of said structure as aforesaid.

And it also agrees that the said party of the first part shall have free transportation over its road for all men, tools and material.

In witness whereof, the parties, by officers duly authorized and empowered for the purpose, have signed, executed and delivered this instrument in duplicate on the day and year first above written.

EDGEMORE BRIDGE WORKS,
By H. S. MORSE, *Pres't.*
Attest: W. F. SELLERS, *Sec'y.*
MEMPHIS & CHARLESTON RAIL ROAD COMPANY,
By C. H. HUDSON, *General Manager.*

(Copy.)

EXHIBIT "B."

An Agreement between the Receivers and Detroit Bridge Works, August 30th, 1892.

This agreement, made and entered into on this 30th day of August, 1892, by and between Chas. M. McGhee and Henry Fink, receivers of the Memphis & Charleston Railroad Company, and the

Detroit Bridge Works, hereinafter styled "the receivers" and "the bridge works," witnesseth:

That for and in consideration of the lump sum of seventy-nine thousand and five hundred (79,500.00) dollars, to be paid by the receivers as hereinafter provided, the bridge works undertakes and agrees to construct and erect a thirteen-span iron bridge across the Tennessee river at Florence Alabama, commonly known as the Florence bridge, furnishing all the labor and material therefor, and all other essentials, excepting the cross-ties and rail guards which are to be furnished by the receivers, but are to be laid and placed in position by the bridge works.

The construction and erection of the said bridge is to be in strict accordance with the strain sheets and specifications submitted,
231 all details to be submitted and approved by the receivers.

The structure is to be proportioned for two (2) ninety-two (92) ton consolidation locomotives, followed by 3,400 pounds per lineal foot, in motion, on the railroad floor, and twelve hundred (1,200) pounds per lineal foot, in motion, on the highway floor; the whole to be strictly in accordance with the latest Keystone specifications, attached.

The bridge works further binds itself to remove the old bridge and place the materials thereof on the river bank at such point as may be designated by the receivers or their general manager, and so arranged as to be conveniently loaded upon the cars of the said Memphis and Charleston Railroad Company for transportation.

The bridge works further binds itself to complete said bridge on or before January 1st, 1893, doing all the work of removal and reconstruction in such manner as not to materially *to* interfere with or obstruct the traffic across said bridge.

The bridge works further binds itself to give all iron one coat of paint at the shops and another coat of paint after erection. All work is to be done subject to the right of inspection by the receivers, or *his* duly appointed representative, the bridge works guaranteeing that in all respects the materials and the work shall be first class and such as shall be satisfactory to the said general manager, or his duly appointed representative. All work is to be accomplished so as not to damage the property of the said Memphis & Charleston Railroad Company in the possession or under the control of the receivers, whether said property may belong to the Memphis & Charleston railroad, or property in the care or custody of the said receivers, as the court's agents in operating said railroad, or in use by them as such agents, or whether it may be the property of others.

The bridge works further agrees and binds itself to indemnify and save harmless said receivers of said Memphis & Charleston
232 Railroad Co. from any and all damages by accidents that may occur by reason of the manner in which said work is done, and all *damages by accidents that may occur by reason of the manner in which said work is done, and all* damages to and suspensions in traffic carried on by said receivers by reason of the failure of said bridge works to do the work as contracted to be done or by reason of the carelessness or unskillful manner in which the

same may be done, for any or either of which said receivers or the said Memphis & Charleston Railroad Company or property might be liable or be subject to liability therefor.

Said bridge works further agrees and binds itself to deliver to said receivers a bond in favor of said receivers of $— for the full true and faithful performance of this contract in all its particulars and to indemnify and protect said receivers and said Memphis & Charleston Railroad Company against all loss or liabilities from liens attaching to said work or structure, under the laws or statute, or that may be declared against the same by the court having jurisdiction to pronounce judgement.

The receivers bind themselves to transport free of charge over the Memphis & Charleston railroad between Chattanooga or Memphis and Florence bridge all men employed by the bridge works in constructing or erecting said bridge, and all *am*terial and tools intended or used for said work or structure.

The receivers further bind themselves to make monthly estimates as the work progresses, and, less 10 % pay said bridge works said estimates at the rate of four (4) cents per pound on all finished materials shipped from the shops to its destination at the bridge site; the freight charges thereon to be prepaid by said bridge works. And the receivers will make and pay further monthly estimates on work erected and completed, of one-half of one cent per pound, less ten per cent., and a final estimate, including said retained
233 percentages, whenever the work shall have been fully completed in accordance with the terms of this contract and accepted by the receivers as a completed job and free from any incumbrances in the nature of liens, etc.

It is understood that all vouchers upon monthly estimates, as hereinbefore provided for, shall be paid in the usual course of business.

In witness whereof, the said bridge works, by officer or agent thereunto duly authorized, and said receivers, by virtue of an order made by the circuit court of the United States for the western district of Tennessee, in the case of Samuel Thomas *vs.* The Memphis & Charleston Railroad Company, in equity No. 449, have signed and delivered this contract in duplicate, the day and year first above written.

THE DETROIT BRIDGE AND IRON WORKS,
By WILLARD S. POPE, *Pt.*
C. M. McGHEE AND
HENRY FINK,
Receivers of the Memphis & Charleston Railroad Company.

(Copy.)

"EXHIBIT B."

An Agreement between the Receivers and the Detroit Bridge Works, October 21st, 1893.

This agreement made and entered into this 21st day of October, 1893, by and between Chas. M. McGhee and Henry Fink, receivers of the Memphis & Charleston Railroad Company and the Detroit Bridge and Iron Works, witnesseth:

That for and in consideration of the sum of $13,172.00 to be paid by said receivers as hereinafter provided and herein conditioned, the bridge works undertakes and agrees to construct and erect in place and render complete the viaduct approaches for the Florence bridge, at the north and south ends thereof, in accordance with strain sheets submitted, dated June 15, 1893, and modifica-
234 tion thereof dated July 12, 1893, and in accordance with Keystone specifications of 1890, said work to comprise eleven spans of deck girder viaduct, trestles etc. on north end, and one span of railway and highway lattice truss, and one span of deck plate girders, trestles, etc. on south end; and to include all essentials and details necessary for the completion and use of said approaches; said work to be constructed, as aforesaid, and to be proportioned for wind and a live load of two East Tennessee, Virginia & Georgia 92-ton consolidation engines, followed by 3,400 pounds per lineal foot; the highway span however, to be proportioned for an additional live load of 1,200 pounds per lineal foot.

All metallic meterial to be of medium steel.

All materials and labor to be furnished and employed, and all work shall be done by said bridge works, save the furnishing of such lumber and materials as the receivers specially agree herein to provide for use in the construction of said approaches.

The receivers agree to furnish the ties and guard-rails for the floors of said approaches, and to deliver same at the site of the said Florence bridge; the bridge works to frame and secure in place and do all the necessary work for the use intended and to be made of said ties and *and* guard-rails.

The bridge works shall furnish the floor timbers for the highway floor, and also the hand rail for said highway, and frame and secure same in place.

The bridge works are to do and provide all things and means necessary for the accomplishment of the work to be carried on and done hereunder.

The work of construction and erection of said approaches shall be first-class in every respect.

The bridge works further agrees and binds itself to take down and remove the old structure and to place the material taken there-
from alongside the track of the Memphis & Charleston rail-
235 road at a suitable point to be designated by the chief engineer of said receivers, or other duly authorized representative, and to so arrange and prepare such materials that they can conveniently be loaded upon the cars of the receivers for transportation.

The bridge works further agrees and binds itself to complete such approaches on or before the 31st day of January, 1894. Also that they will do all the work of construction and erection in such manner as not materially to interfere with or obstruct the traffic and travel across, on or over said Florence bridge.

The bridge works further binds itself to give all metal one coat of the best linseed oil at the shops, and one coat of paint, of approved color and brand, after erection.

That all work hereunder is to be done subject to the right of inspection by the receivers or by their general manager or chief engineer or other authorized representative, and shall be done to the entire satisfaction of said general manager or said chief engineer; the bridge works hereby guaranteeing that in all respects the materials and work shall be first-class and such as shall be entirely satisfactory to said receivers and to their general manager or chief engineer. All work shall be so accomplished as not to damage the property of said receivers.

The bridge works further agrees and binds itself to indemnify and save harmless the said receivers from any and all damages by accident that may occur by reason of the manner in which said work is done or by reason of the car-lessness or negligence of the bridge works or any of its employees or agents or others acting by their right and authority.

Said bridge works further agrees and binds itself to indemnify the receivers against loss or liability from liens attaching to said work or structures, under any law or statute, or that may be declared against the same by any court having jurisdiction to pronounce judgement. And said bridge works shall, upon the demand
236 of said receivers or their general manager, furnish satisfactory evidence *af* all liens and claims by whomsoever declared and made, for work or material etc. in and upon said work and bridge, have been fully satisfied and discharged.

The receivers bind themselves to transport free of charge over the Memphis & Charleston railroad, all men employed by the bridge works, and engaged in and upon the work to be done hereunder, and also all materials intended for use in said work or bridge approaches.

And the receivers further bind themselves to pay said sum of $13,172 for the full discharge of all claims or demands hereunder, and for all work done by said bridge works upon said Florence bridge, until the completion of said work, done and furnished, as conditioned and provided herein.

In witness whereof the said bridge works, by officer or agent thereunto duly authorized, and said receivers have signed and delivered this instrument, in duplicate, on the day and year first above written.

C. M. McGHEE AND
HENRY FINK, *Receivers.*
DETROIT BRIDGE AND IRON WORKS,
By W. S. POPE, *Pt.*

(Copy.)

Agreement between the Memphis & Charleston Railroad Company and the Nashville, Florence and Sheffield Railway Company, July 1892.

This agreement made this twelfth day of July 1892, between the Memphis & Charleston Railroad Company of the first part, and the Nashville Florence & Sheffield Railway Company of the second part. Witnesseth:

That whereas the Memphis & Charleston Railroad Company owns and operates a branch railroad, including a bridge across the Tennessee river from Florence Alabama to Sheffield Alabama,

And whereas the Nashville, Florence & Sheffield Railway Company owns and operates a railroad from Columbia Tennes-
237 see, to Florence Alabama, and a branch on the south side of the Tennessee river from a point on the said branch railroad of the Memphis & Charleston Railroad Company into the city of Sheffield Ala., and desires to use said bridge and approaches thereto.

Now therefore in consideration of the premises and benefits to be derived by both of the parties in their joint use of the bridge and approaches and the tracks connecting the same, now owned by the said Memphis & Charleston Railroad Company, it is agreed,

First. That the Memphis & Charleston Railroad Company hereby leases to the Nashville, Florence & Sheffield Railway Company the joint and equal use of the bridge and approaches thereto hereinbefore described and that portion of the road of the Memphis and Charleston Railroad Company extending from point of connection four thousand seven hundred and fifty-five feet north of the bridge, being the north line of Chestnut street in the city of Florence Alabama, to the junction of the track of the Nashville, Florence & Sheffield Railway Company south of the bridge, being a distance of about 15,496 feet.

Secondly. That the Memphis & Charleston Railroad Company agrees to replace the present bridge and approaches with a modern iron and steel structure, capable of carrying a live load of not less than two ninety-two-ton locomotives coupled together, followed by a train weighing not less than three thousand pounds per lineal foot, with an additional load of one thousand pounds for the highway. It also agrees to make the contracts at the earliest practicable dates, and press the reconstruction to completion with the least possible delay, and hereby binds itself that the bridge proper shall be built not later than January first 1893, provided the work is not interferred with by strikes, freshets, or circumstances beyond the control of the railroad company. The approaches are to be completed by that time or as soon thereafter as may be practicable.

Third. That the present value of said bridge and ap-
238 proaches and tracks to be used under this agreement, upon which rent as hereinafter provided is to be paid, is fixed at one hundred and sixteen thousand two hundred and thirty-two dollars and seventy cents ($116,232.70) which is the present value

of the bridge, approaches and tracks, less the value of that part of the bridge and approaches which is used as a footway and roadway. (See Schedule "A" attached.) During the process of the work of repairing and constructing said bridge and approaches, and after its completion, the value of the property covered by this contract shall be considered as one hundred and sixteen thousand, two hundred and thirty-two dollars and seventy cents ($116,232.70), plus seventy-seven and eight-tenths per cent. (77.8) of whatever sum may be expended by the Memphis & Charleston Railroad Company subsequent to the date of this contract, in repairing and constructing said bridge and approaches, subject to the credit for the value of the old material removed. Approximate adjustments of rental to be made monthly by adding to the cost herein specified the amount expended for the preceding month.

Fourth. It is agreed that the Nashville, Florence & Sheffield Railway Company shall pay as rent a sum equal to six per cent. per annum upon one-half of the value of said bridge, its approaches and that portion of said railroad which it is to jointly use with the Memphis & Charleston Railroad Company, as fixed in perceeding section.

Fifth. That the rent to be paid by the Nashville, Florence & Sheffield Railway Company for the joint use of the said bridge, its approaches, and the part of the track of the Memphis & Charleston Railroad Company to be used jointly under this agreement shall be paid in equal monthly installments in the due course of business, or say between the fifteenth and thirtieth of each succeeding month. That if said rental shall not be paid within the time herein designated, or if the said Nashville Florence & Sheffield R'y Co. shall fail to make any of the payments provided by any
239 of the covenants of this agreement, and the same shall remain due and unpaid for the space of ninety (90) days, then and in that case the said Memphis & Charleston Railroad Company shall have the right at its option to declare this contract at an end, and thereafter, when said option shall have been exercised by said Memphis & Charleston R. R. Co., and the said Nashville, Florence & Sheffield R'y Co. shall have been notified in writing by said Memphis & Charleston R'y Co. of the termination of this contract the right of said Nashville, Florence & Sheffield R'y Co. for the joint use of said bridge shall immediately cease and terminate.

Sixth. That the cost of maintaining said bridge and approaches and the section of the road to be jointly used, less 21.6 per cent., the estimated cost of maintaining the foot and road way, as fixed by Mr. E. Thatcher in his report, revised as per Schedule "B" attached shall be borne by the parties hereto in the proportion that the number of loaded and empty cars of each party hereto passing over said bridge and approaches so jointly used bears to the total number of loaded and empty cars passing over the same, and such operating expenses as may be incurred under paragraph seventh of this contract shall be divided likewise on wheelage; and the said Nashville, Florence & Sheffield R'y Co. agrees to pay its proportion of the

said maintainance and expenses to the said M. & C. R. R. Co. in the usual course of business.

Seventh. The appointment of all joint employees, including telegraph operators, dispatchers, watchmen and other employés required in the joint operation and maintainance of that part of the road of the said Memphis & Charleston R. R. Co. including said bridge and approaches which is to be jointly used by the parties under this contract, shall be made by the Memphis & Charleston R. R. Co. provided, however, that any such operator, dispatcher or other joint agent or employee who may be objectional to the proper authorities of the Nashville, Florence & Sheffield R'y Co.
240 shall be discharged at the written request of the said authorities, such discharge to take effect upon the appointment of persons who shall be unobjectionable to the proper authorities of the Nashville, Florence & Sheffield R'y Co.

Should watchmen be used as toll collectors, then only one-half of their time shall be charged to the railroad portion of the bridge, the other half will be borne by the roadway portion.

Eight. That the trains and employees of the said Nashville, Florence & Sheffield R'y Co. while upon any portion of the road said to be jointly used by the parties hereto, shall be subject to the rules of the Memphis & Charleston Railroad Company, and to the control and orders of its train dispatchers.

Ninth. That all schedules for trains of said Nashville, Florence & Sheffield R'y Co. which may be run over the said bridge and road to be jointly used by the parties under this contract made and arranged by said Memphis & Charleston Railroad Company, from time to time upon the request of the said Nashville, Florence & Sheffield R'y Co. it being distinctly understood and agreed that the trains of both parties shall have equal rights in every respect, except that the trains of the first class of either party shall have preference over the trains of the *trains of the* second or inferior class of the other party, and that the trains of the same class shall have equal rights, except where the rights of the same class conflict, in which event there shall be an equitable division of differences, and in case of failure of the parties to agree upon an equitable division of differences, the matter shall be submitted to and decided by arbitration to be selected as hereafter provided.

And it is further agreed that the Nashville, Florence and Sheffield R'y Co. shall also have the right to run its special trains and switch-engines over the road to be jointly used at such times as may be desired, the orders for all such special trains and engines to
241 be furnished by the said Memphis & Charleston Railroad Co.

Tenth. In case of any accidents to the trains of either company, parties to this contract, by which the track to be used jointly by the parties hereto may become obstructed, the party causing such obstruction agrees to and shall remove the same with reasonable diligence.

Any damage or loss which may occur to the property belonging to or in the custody of either party hereto, or injury to the person or property of other persons which may result from the operation of said portion of said railroad, shall be borne by the party whose

employees are at fault, whether by negligence, carelessness, or wrongful act of omission; but when damages are suffered by either party hereto, or by any employee or passenger of said party and which shall be due to the negligence of employees appointed under the provisions of article seven, neither party shall be responsible to the other for damages which it or its said employee or passengers may suffer.

Should the track or bridge to be jointly used be injured or damaged, the same shall be repaired at the expense of the company that may cause the damage. Should such damage result from the negligence of joint employees appointed under the provisions of article seven, the cost of repairing such damage shall be charged to both of the parties on the basis of repairs or maintainance in accordance with section six.

Eleventh. That in all cases of which the rights of the parties under this contract may come into question, and the matters of difference cannot be amicably settled and adjusted by the proper officers of the parties hereto, such questions and matters of differences shall be submitted in writing to three disinterested arbitrators, to be chosen as follows: One by the Memphis & Charleston R. R. Co., one by the Nashville, Florence & Sheffield R. R. Co., and the third to be chosen by the two arbitrators selected by the parties hereto, the decision of whom, or a majority of them, shall be
242 final and conclusive; and any amount that may be adjudged by them to be due by one party to the other shall be paid within thirty days from the date of the decision of the arbitrators.

That in the event that either party fails, refuses or neglects to appoint an arbitrator as provided herein, after five days' written notice to do so, the other party may appoint an arbitrator, who shall have the powers of the three arbitrators herein provided for, and his judgement or decision in writing shall have the same effect as that of the arbitrators herein provided for. If the arbitratoes chosen by the parties hereto shall in case of disagreement fail within ten days after their selection to agree upon the third arbitrator or neglect to make appointment, then either of the parties hereto may apply without notice to the other party of any court of competent jurisdiction to make such appointment.

Twelfth. It is mutually agreed that this contract shall go into effect at once and shall remain in effect for ten years from this date. After the expiration of the term of ten years either party hereunto may terminate this agreement at any time by giving two years' notice to the other party.

In witness whereof, the parties hereto have caused these presents to be executed by their proper officers and their corporate seals affixed the day and year first written above.

MEMPHIS & CHARLESTON RAILROAD COMPANY,

By ——— ———, *Secretary.*

Attest: ——— ———.

NASHVILLE, FLORENCE & SHEFFIELD RAILWAY CO.,

By ——— ———, *Secretary.*

Attest: ——— ———.

243 SCHEDULE "A."

Value of Property Used Jointly by Nashville, Florence & Sheffield and the Memphis & Charleston Railroads, as Revised June 28th, 1892.

Value of present bridge (see estimate No. 2).....		$125,552 14
Deduct pier No. 15, new.....	$2,800	
" " " 17, to be rebuilt.....	1,440	
" " " 21, to be rebuilt.....	1,440	
" foundations above piers only.... ..	1,500	
		7,180 00
Present value of bridge only.....		$118,372 14

NOTE.—The value of pier No. 15 (new) is included in construction account of the M. & C. R. R., and the value of the old pier should therefore be deducted from estimate No. 2.

Piers No. 17 and 21 have now been condemned and have no value, exceeding the cost of removal, and are also deducted as above.

Value of other property.

Track now used jointly 2.445 miles, instead of 5.64 miles, as given in report. Value prorated..... $\frac{2.445 \times \$55,683.03}{5.64}$ $24,139 18

Value of property used jointly belonging to railroad.

Bridge only 77.8 per cent. of $118,372.14.....	$92,093 52
Other property.....	24,139 18
Total....	$116,232 70
½ value of property used for railroad..... ...	58,116 35

244 SCHEDULE "B."

Maintenance of Florence Bridge—Revised June 28, 1892.

Bridge only.

(See report of E. Thatcher, p. 26–28.)

Other property.

Keeping up track, 2.445 miles at $400, $978.00 every year.
Trestle 2,600 ft. S. of bridge, 115, at $4, 460.00 every year.

Capitalized value.

Track (every year), $978.00 ÷ 0.06 = ...	$16,300 00
Trestle (every 7 years), $460.00 ÷ 0.503 = ...	914 50
Total.....	$17,214 50

Total maintainance.

Bridge railroad proportion (see report).....	$18,181 10	
Bridge track and prestle as above.....	17,214 50	
Total railroad.....	$35,395 60 =	78.4 %
See E. Thatcher's report, page 29, highway.	9,751 00 =	21.6 %
Total.....	$45,140 60 =	100 %

EXHIBIT M. H.

The gross income for the public-roadway portion of the bridge for the year 1896 was $4,500.70.

EXHIBIT L. H.

The earnings of the entire bridge at Florence for the year 1895 *was* $9,079.99.

245 *Final Decree.*

In the Circuit Court of the United States in and for the Northern Division of the Northern District of Alabama.

CHARLES M. MCGHEE and HENRY FINK, as Receivers of the Memphis & Charleston Railroad Company, and said Memphis & Charleston Railroad Co., Complainants,
vs.
WILLIAM C. OATES, as Governor of the State of Alabama; William C. Fitts, as Attorney General of the State of Alabama; A. H. Carmichael, as Solicitor of 11th Judicial Circuit of Alabama, and William H. Gilliam, Individually, Defendants. } No. 213. Equity.

This cause coming on to be heard, the submission at the former term of the court is hereby set aside, and, it being made to appear to the court that the defendant William C. Oates has ceased to be the governor of the State of Alabama, it is thereupon ordered that the said cause be discontinued as to him, and the cause is now resubmitted at this term of the court for final decree upon the pleadings and testimony offered by the parties, and upon due consideration thereof it is considered by the court that the complainants are entitled to relief.

It is thereupon ordered, adjudged, and decreed that the act of the legislature of the State of Alabama referred to and set up in the original bill of complaint in the cause, which act was approved February 9th, 1895, and entitled "An act to fix the maximum of tolls to be charged by the owners, lessees, or operators of the road bridge across the Tennessee river, between the counties of Colbert

and Lauderdale, and known as the Florence bridge, and to fix the penalty for demanding or receiving a higher rate of tolls," is violative of the constitutional rights of the owners of said bridge and of the complainants as their representatives, in that it fixes a rate of tolls for said bridge which are not fairly and reasonably compensatory, and it is therefore hereby declared to be invalid and inoperative, and the injunctions heretofore granted in the cause are hereby made perpetual.

246 It is further ordered, adjudged, and decreed that the defendants pay the costs of this proceeding, for which let execution issue.

Done this 15th day of April, 1897.

ALECK BOARMAN, *Judge.*

Endorsed: Filed April 15th, 1897. N. W. Trimble, clerk.

247 *Petition for Appeal.*

The Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

CHARLES M. McGHEE and HENRY FINK, as Receivers of the Memphis & Charleston Railroad Company, and said Memphis & Charleston Railroad Co., Complainants, *vs.* WILLIAM C. FITTS, as Attorney General of the State of Alabama; William H. Gilliam, and A. H. Carmichael, as Solicitor, etc., Defendants.	No. 213. Equity.

The said William C. Fitts, as attorney general of the State of Alabama; A. H. Carmichael, as solicitor for the 11th judicial circuit of the State of Alabama, and William H. Gilliam, the above-named defendants, conceiving themselves aggrieved by the decree made and entered on the 15th day of April, 1897, in the above-entitled cause, do hereby appeal from said order and decree to the Supreme Court of the United States, at Washington, for the reasons specified in the assignment of errors which is filed herewith, and they pray that this appeal may be allowed, and that the court will fix the amount and take the proper security for said appeal, and that a transcript of the record, proceedings, and papers upon which said order and decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

W. C. FITTS,
Attorney General of Alabama.
O'NEAL AND WOOD,
Solicitors for the Defendants.

Endorsed: Filed in clerk's office May 12th, 1897. N. W. Trimble, clerk.

248 *Order Granting Appeal.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

CHARLES M. McGHEE and HENRY FINK, as Receivers of the Memphis & Charleston Railroad Company, and said Memphis & Charleston Railroad Co., Complainants,
vs.
WILLIAM C. FITTS, as Attorney General of the State of Alabama; A. H. Carmichael, Solicitor, etc., and William H. Gilliam, Defendants.
} No. 213. Equity.

The above-named defendants having this day filed their petition praying that they may be allowed an appeal from the decree of this court rendered in said cause on the 15th day of April, 1897, and also praying that the amount of the appeal bond be fixed and the proper security taken by the court for said appeal, and it appearing to the satisfaction of the court that the said defendants have filed with their petition for appeal their assignments of error, as required by law:

It is therefore ordered by the court that said petition be granted and that said appeal be allowed, as prayed in and by the said petition, to the Supreme Court of the United States, and that the appeal bond be fixed for the amount of five hundred dollars, and the said defendants having presented to this court for approval said bond, conditioned as required by law, the same is hereby approved and the proper citation signed.

This the 8th day of May, 1897.

JOHN BRUCE, *Judge.*

Endorsed: Filed in clerk's office May 12th, 1897. N. W. Trimble, clerk.

249 *Appeal Bond.*

Know all men by these presents that we, William C. Fitts, as attorney general of the State of Alabama; A. H. Carmichael, as solicitor of the 11th judicial circuit of Alabama, and William H. Gilliam, as principals, and Joseph F. Johnson and William J. Wood, as sureties, are held and firmly bound unto Charles M. McGhee and Henry Fink, as receivers of the Memphis & Charleston Railroad Company, in the full and just sum of five hundred dollars, to be paid to the said Charles M. McGhee and Henry Fink, as receivers of the Memphis & Charleston Railroad Co., its certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, jointly and severally by these presents.

Sealed with our seals and dated this 8th day of May, in the year of our Lord one thousand eight hundred and ninety-seven.

Whereas lately, at an April term of the circuit court of the United States for the northern division of the northern district of Alabama, in a suit pending in said court between Charles M. McGhee and Henry Fink, as receivers of the Memphis & Charleston Railroad Company, complainants, and William C. Fitts, as attorney general of Alabama; A. H. Carmichael, as solicitor, and William H. Gilliam, defendants, and the said William C. Fitts, as attorney general, A. H. Carmichael, as solicitor, as aforesaid, and Wm. H. Gilliam having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the aforesaid Charles M. McGhee and Henry Fink, as receivers aforesaid, citing and admonishing them to be and appear at the United States Supreme Court, to be holden at Washington, D. C., within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said Wm. C. Fitts, as attorney general of Alabama; A. H. Carmichael, as solicitor for the 11th judicial circuit of Alabama, and Wm. H. Gilliam shall prosecute the said appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

250

WILLIAM C. FITTS,
As Attorney General of Alabama.
A. H. CARMICHAEL,
As Solicitor of the 11th Judicial Circuit.
W. H. GILLIAM.
JOS. F. JOHNSON.
W. J. WOOD.

Sealed and delivered in presence of—

——— ———.
——— ———.
——— ———.
——— ———.
——— ———.

Approved by—

JOHN BRUCE, *Judge.*

Endorsed: Filed in clerk's office May 12th, 1897. N. W. Trimble, clerk.

251 *Assignment of Errors.*

The Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

CHARLES M. McGHEE and HENRY FINK, as Receivers of the Memphis & Charleston Railroad Co., Complainants, *vs.* WILLIAM C. FITTS, as Attorney General of the State of Alabama; A. H. Carmichael, as Solicitor, and William H. Gilliam, Defendants.	No. 213. Equity.

The above-named defendants, in connection with their petition for appeal, make the following assignment of errors, which they aver occurred in the trial of said cause, and say that the decree in said cause is erroneous and against the just rights of the said defendants for the following reasons:

1. That the circuit court of the United States for the northern division of the northern district of Alabama erred in the order of decree entered on the 14th day of February, 1895, authorizing and directing Charles M. McGhee and Henry Fink, as receivers of the Memphis & Charleston Railroad Company, to commence and institute this suit against the State of Alabama.

2. That the said court erred in granting the petition of Charles M. McGhee and Henry Fink, as receivers of the Memphis & Charleston Railroad Company, to institute and prosecute this suit against the State of Alabama, William C. Oates, as governor of the State of Alabama, and William C. Fitts, as attorney general of the State of Alabama, to test the constitutionality and the validity of — the General Assembly of the State of Alabama entitled "An act to fix the tolls to be charged by the owners, lessees, or operators of the road bridge crossing the Tennessee river between the counties of Colbert and Lauderdale and known as the Florence bridge, and to fix the penalty for demanding or receiving a higher rate of tolls,"

252 approved February 9th, 1895, the said decree granting the said petition of the said receivers being of date February 14th, 1895.

III. That the said court erred in authorizing the clerk to issue and the marshal to serve and execute a subpœna to the State of Alabama without its consent, commanding the said State of Alabama to personally appear, answer, plead, or demur to the bill of complaint filed against the said State of Alabama in this cause.

IV. That the said court erred in entering the order or decree of date February 16th, 1895, restraining and enjoining William C. Oates, as governor of the State of Alabama, and William C. Fitts, as attorney general of the State of Alabama, and all persons whomsoever from instituting or prosecuting any proceedings against the said Charles M. McGhee and Henry Fink, as receivers of the Memphis & Charleston Railroad Company, the complainants or

plaintiffs in the said bill of complaint, under the forfeiture clause set out in the second section of the act of the General Assembly of the State of Alabama approved February 11th, 1895, entitled "An act to fix the maximum of tolls to be charged by the owners, lessees, or operators of the road bridge crossing the Tennessee river between the counties of Colbert and Lauderdale and known as the Florence bridge, and to fix the penalty for demanding or receiving a higher rate of tolls."

V. That the said court erred in the interlocutory order or decree entered on the 27th day of April, 1895, restraining and enjoining William C. Oates, as governor of the State of Alabama, and William C. Fitts, as attorney general of the State of Alabama, and all persons whomsoever from instituting or procuring the institution of any proceeding against the plaintiffs or complainants in the bill of complaint in said cause, by mandamus or otherwise, to compel the observance of and obedience to the act in reference to the rate of tolls fixed thereby over the Florence bridge across the Tennessee
253 river, in the counties of Colbert and Lauderdale, and from instituting any proceedings or procuring the institution of any proceedings against the said plaintiffs or complainants in the bill of complaint or either of them for the forfeiture of the franchise of the said Memphis & Charleston Railroad Company in and to the bridge aforesaid on account of the refusal to charge the rate of tolls fixed by said act; that the said State of Alabama, on the 13th day of March, 1895, had filed its motion to dismiss the original bill filed in said cause, on the ground that the suit, being a suit against the State of Alabama, was prohibited by the 11th amendment to the Constitution of the United States, and that the said court had no jurisdiction over the same, and yet, while the said motion was pending undetermined without notice or leave of the court, the plaintiffs or complainants in said suit undertook to amend their said bill, and upon presentation of the said amended bill the said court, without authority and in disregard of law, entered the decree of date April 27th, 1895, granting the injunction prayed for in said amended bill of date April 27th, 1895.

VI. That the court erred in the decree entered on the 30th day of January, 1896, denying and overruling the motion filed by the appellants The State of Alabama, William C. Oates, as governor of the State of Alabama, and William C. Fitts, as attorney general of the State of Alabama, on the 13th day of March, 1895, to dismiss the said suit in this cause because it was a suit against the State of Alabama brought without its consent, and as such was prohibited by the 11th amendment to the Constitution of the United States.

VII. That the said court erred in the decree entered at chambers at Montgomery on 30th January, 1896, granting the petition of the said complainants or plaintiffs in the said suit for leave to amend their said bill by making A. H. Carmichael, as solicitor for the 11th judicial circuit of the State of Alabama, a party defendant to the said bill.

254 VIII. That said court erred in making any orders in said suit or exercising any jurisdiction thereunder because it was

a suit against the sovereign State of Alabama prohibited by the Constitution of the United States.

IX. That the said court erred in the decree rendered on the 30th day of January, 1896, and entered at chambers at Montgomery, Alabama, in the middle district of Alabama, enjoining and restraining A. H. Carmichael, as solicitor of the 11th judicial circuit of the State of Alabama, from instituting or prosecuting as such solicitor any indictment or criminal proceedings against any one for a violation of the alleged unconstitutional act of the General Assembly of the State of Alabama as described in the amended or supplemental bill filed in said cause.

X. That the said court was without power or jurisdiction to enter the said decree of January 30th, 1896, enjoining and restraining the said A. H. Carmichael, as such solicitor or prosecuting officer of the State of Alabama, from prosecuting persons for violations of the criminal laws of the State of Alabama.

XI. That the said court erred in its decree or order entered at chambers at Montgomery, Alabama, in the middle district of Alabama, on the 30th day of January, 1896, releasing Thomas Clem and George W. Brabson, who had been indicted by virtue of a criminal statute of the State of Alabama for charging excessive tolls on the Florence bridge.

XII. That the said court erred in its decree or order overruling the demurrers numbered from 1 to 28, both inclusive, filed by William C. Oates, as governor of the State of Alabama; William C. Fitts, as attorney general, and A. H. Carmichael, as solicitor for the 11th judicial circuit of the State of Alabama.

XIII. That the said court erred in overruling the demurrers filed by Wm. H. Gilliam and numbered from 1 to 19, both inclusive.

255 XIV. That the said court erred in overruling the grounds of demurrer interposed by the defendants to the bill of complaint, which were to the effect that complainants failed to set out and show in their original bill and the amendments thereto that the Memphis & Charleston Railroad Company ever made any valid or legal purchase or acquired any legal or valid title to the bridge, property, and franchise of the Florence Bridge Company.

XV. That the said court erred in overruling the demurrers of the defendants, which alleged that in the bill filed in this cause and the amendments thereto the complainants wholly failed to state or show that the Florence Bridge Company had any power or authority under its charter or any subsequent act of the General Assembly of the State of Alabama or any general laws of the said State to sell or alienate its franchises and property.

XVI. That the said court erred in overruling the grounds of demurrer interposed by the defendants to the said bill and the amendments thereto, and numbered 16, 17, 22, which stated in substance that inasmuch as the Florence Bridge Company was property affected with the public use, and the act of the General Assembly of the State of Alabama incorporating the said Florence Bridge Company conferred upon it no exclusive privilege or franchise and contained no stipulation limiting the power of the State to regulate and control

the rates of toll over the said bridge, that the bill and the amendments thereto wholly failed to show any impairment of any chartered rights of the complainants in this suit or to show that the General Assembly of the State of Alabama did not have the right to regulate the tolls on the said bridge.

XVII. That the said court erred in overruling the demurrer numbered 6 and 7, filed by the defendants, which alleged that the said bill and the amendments thereto failed to show any equity or right of the complainants against the governor of the State
256 of Alabama or the attorney general of the State of Alabama or either of them, or failed to allege or show any threatened injury to the complainants by them or either of them.

XVIII. That the said court erred in overruling demurrers interposed by the defendants, numbered 1, to the effect that this suit is in fact a suit against the State of Alabama and is prohibited by the 11th amendment of the United States.

XIX. That the said court erred in overruling demurrer numbered three filed by the defendants Oates, Fitts, and Carmichael.

XX. That the said court erred in overruling demurrer numbered four filed by the said defendants, Oates, Fitts, and Carmichael.

XXI. That the said court erred in overruling the demurrer numbered five filed by the said defendants, Oates, Fitts, and Carmichael.

XXII. That the said court erred in overruling demurrer numbered five filed by the said defendants, Oates, Fitts, and Carmichael.

XXIII. That the said court erred in overruling demurrer numbered eight filed by the said defendants, Oates, Fitts, and Carmichael.

XXIV. That the said court erred in overruling demurrer numbered eleven filed by the said defendants, Oates, Fitts, and Carmichael.

XXV. That the said court erred in overruling demurrer numbered twelve filed by the said defendants, Oates, Fitts, and Carmichael.

XXVI. That the said court erred in overruling demurrer- numbered thirteen and fourteen filed by the said defendants, Oates, Fitts, and Carmichael.

XXVII. That the said court erred in overruling demurrer numbered fifteen, to the effect that the Florence Bridge Company was a necessary plaintiff to this suit, and which demurrer was filed by the defendants Oates, Fitts, and Carmichael.

XXVIII. That the said court erred in overruling demurrer numbered 16 filed by the said defendants, Oates, Fitts, and Carmichael.

257 XXIX. That the said court erred in overruling demurrer numbered 17 filed by the said defendants, Oates, Fitts, and Carmichael.

XXX. That the said court erred in overruling the 18th ground of demurrer filed by the said defendants, Oates, Fitts, and Carmichael.

XXXI. That the said court erred in overruling the 19th and 20th ground- of demurrer filed by the defendants Oates, Fitts, and Carmichael in this case.

XXXII. That the said court erred in overruling the 21st ground of demurrer filed in this case by the defendants Oates, Fitts, and Carmichael.

XXXIII. That the said court erred in overruling the 22nd ground of demurrer interposed in this case by the said Oates, Fitts, and Carmichael.

XXXIV. That the said court erred in overruling the 23rd ground of demurrer interposed by the said defendants, Oates, Fitts, and Carmichael, in said cause.

XXXV. That the said court erred in overruling the 24th ground of demurrer interposed by the said defendants, Oates, Fitts, and Carmichael, in said cause.

XXXVI. That the said court erred in overruling and refusing, by its final decree of April 16th, 1897, to dismiss the said original and amended and supplemental bills filed in said cause for want of equity.

XXXVII. That the said court erred in admitting and considering, against the objections of the defendants, the testimony of A. H. Plant, auditor of the Memphis & Charleston Railroad Company, taken on the 20th day of February, 1897, this case having been submitted on the — day of January, 1897.

XXXVIII. That the said court erred in admitting and
258 considering, against the objections of defendants, all that portion of the testimony of A. H. Plant and the exhibits thereto which refer to the receipts and expenditures of the railroad part of the Florence bridge.

XXXIX. That the said court erred in the final decree made and entered in said cause on the 15th April, 1897.

XL. That said court erred in deciding in the final decree that the rates of toll fixed by the General Assembly of Alabama in an act entitled "An act to fix the maximum of tolls to be charged by the owners, lessees, and operators of the road bridge crossing the Tennessee river between the counties of Colbert and Lauderdale and known as the Florence bridge, etc.," were unreasonable.

XLI. That the said court erred in not rendering a decree in favor of the defendants on the final hearing of the said cause.

XLII. That said court erred in not dismissing the original, amended, and supplemental bill for want of jurisdiction.

XLIII. That the said court erred in not rendering a final decree dismissing the original and amended bills in said cause.

And for other errors apparent upon the record.

Wherefore the said defendants pray that the said decree of April 15th, 1897, be reversed, annulled, and held for naught, and that a decree be rendered dismissing the original, amended, and supplemental bills in this cause.

WILLIAM C. FITTS,
Attorney General of Alabama.
O'NEAL & WOOD,
Sol's for Defendants.

Endorsed: Filed in clerk's office May 12th, 1897. N. W. Trimble, clerk.

259 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Charles M. McGhee and Henry Fink, as receivers of the Memphis & Charleston railroad, and The Memphis & Charleston Railroad Company or their solicitors of record, Messrs. Humes, Sheffey & Speake, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., thirty days after the date hereof, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the northern division of the northern district of Alabama, wherein William C. Fitts, as attorney general of the State of Alabama; A. H. Carmichael, as solicitor of the eleventh judicial circuit of the State of Alabama, and William H. Gilliam are appellants and you are respondents, to show cause, if any there be, why the decree rendered against the said appellants, as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 8 day of May, in the year of our Lord one thousand eight hundred and ninety-seven.

JOHN BRUCE, *Judge.*

259½ On this 12 day of May, in the year of our Lord one thousand eight hundred and ninety-seven, personally appeared Ed E. Greenleaf before me, the subscriber, and makes oath that he delivered a true copy of the within citation to John H. Sheffey, a member of the firm of Humes, Sheffey & Speake, attorneys of record for the respondents in this cause.

ED. E. GREENLEAF.

Sworn to and subscribed the 12th day of May, A. D. 1897.

[Seal Circuit Court U. S., N. D. of Alabama.]

N. W. TRIMBLE,
Clerk U. S. Cir. Court.

260 UNITED STATES OF AMERICA,
Northern District of Alabama, Northern Division.

I, N. W. Trimble, clerk of the circuit court of the United States of America in and for said division and district, do hereby certify that the foregoing transcript from pages — to page —, inclusive, is a true, full, and complete copy of the original and supplemental and amended bills filed, the decrees rendered, the depositions, and exhibits thereto (except Exhibit "Two Reports of President and Directors, Entitled Minutes and Reports M. & C. R. R.," to testimony of R. B. Pegram, which were referred to but not filed) as fully as the same appears on file and of record in the case of Charles M. McGhee and Henry Fink, as receivers of the Memphis & Charleston railroad, and said Memphis & Charleston Railroad Company against William C. Fitts, as attorney general of the State of Alabama; A. H. Carmichael, as solicitor of the 11th judicial circuit of the State of

Alabama, and William H. Gilliam, being equity cause No. 213, lately pending in the said court.

Witness my official signature and the seal of said court, at the city of Huntsville, the place of holding said court, in said division and district, this the fifth day of June, in the year of our Lord one thousand eight hundred and ninety-seven.

Seal Circuit Court U. S., N. D. of Alabama.

N. W. TRIMBLE,
Clerk U. S. Circuit Court, Northern Division, Northern District of Alabama.

261 The Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

CHARLES M. McGHEE and HENRY FINK, as Receivers of the Memphis & Charleston Railroad Company, Complainants,
vs.
WILLIAM C. FITTS, as Attorney General of the State of Alabama; A. H. Carmichael, as Solicitor, and William H. Gilliam, Defendants.
} No. 213. Equity.

Whereas in the above-styled cause the above-named defendants have this day prayed an appeal from the decree of the circuit court for the said northern division of the northern district of Alabama rendered in the said cause on the 15th day of April, 1897, and which appeal has been granted; and whereas it appears to the satisfaction of the court that it is impossible for the clerk of the said court to complete the transcript and record in said cause by or before the return day thereof, the record in said cause being voluminous:

Now, therefore, upon the application of the above-named defendants, the appellants in said cause, and for good cause shown, it is ordered by the court that the time for docketing the said cause and filing the record thereof with the clerk of the Supreme Court of the United States be, and the same is hereby, enlarged and extended for sixty days from the date hereof.

Done in open court this the 8th day of May, 1897.

JOHN BRUCE, *Judge.*

Endorsed: Filed in clerk's office May 12th, 1897. N. W. Trimble, clerk.

Endorsed on cover: Case No. 16,622. N. Alabama C. C. U. S. Term No., 409. William C. Fitts, as attorney general of the State of Alabama; A. H. Carmichael, as solicitor of the eleventh judicial circuit of the State of Alabama, and William H. Gilliam, appellants, *vs.* Charles M. McGhee and Henry Fink, as receivers of the Memphis & Charleston railroad, and The Memphis & Charleston Railroad Company. Filed July 5, 1897.

1659

In Supreme Court of the United States.

IN EQUITY.

No. 409.

WILLIAM C. FITTS,
As Attorney-General of the State of Alabama;
A. H. CARMICHAEL,
As Solicitor of the Eleventh Judicial Circuit of the State of Alabama; and
WILLIAM H. GILLIAM,
Appellants.

versus

CHAS. M. McGHEE AND HENRY FINK,
As Receivers of the Memphis and Charleston Railroad, and The Memphis and Charleston Railroad Company.

BRIEF FOR THE APPELLANTS.

The Florence Bridge Company was chartered to build and operate a toll bridge over the Tennessee River at Florence, by an act of the General Assembly of Alabama, approved January 12, 1832. Said charter is in words and figures as follows:

"AN ACT

To incorporate the Florence Bridge Company.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened,* That the persons who may be-

come stockholders in the Florence Bridge Company, according to the provisions of this act, be and they are hereby created a body politic and corporate, by the name and style of the president, directors and company of the Florence Bridge Company, with power to hold real and personal estate, to sue and be sued, plead and be impleaded in any court of law and equity; to have and employ a common seal and to alter the same at pleasure; to make, amend and repeal all necessary and proper by-laws for the government of said corporation not inconsistent with the laws and constitution of this State.

SEC. 2. *And be it further enacted*, That the stock of said corporation shall be divided into shares of one hundred dollars each, and when there shall be subscribed the sum of sixty thousand dollars, the owners of the ferry across the Tennessee river at said town of Florence, shall be permitted to subscribe their respective shares or interests in said ferry or ferry landings, at the rate of thirty-five thousand dollars for the whole; and the interest so subscribed shall become a part of the capital and joint stock of said corporation; and when the whole interest in said ferry and landings shall be subscribed or condemned, according to the provisions of this act, the said corporation shall be vested with the whole title thereof, both in law and equity, to be held by them and their heirs and successors forever, upon the completion of the bridge according to this act.

SEC. 3. *And be it further enacted*, That John J. Winston, Abram D. Hunt and John McKinley, be and they are hereby appointed commissioners to re-

ceive subscriptions for the purpose of erecting a bridge across the Tennessee river at the said town of Florence, whose duty it shall be to open books for the subscription of stock, at the Eagle hotel in said town of Florence, on the 3rd Monday in April, 1832, and to keep said books open until the sum of sixty thousand dollars shall be subscribed.

SEC. 4. *And be it further enacted*, That when the sum of sixty thousand dollars shall be subscribed, exclusive of said ferry, it shall be the duty of said commissioners to call a meeting of said stockholders, for the purpose of electing a president and four directors of said bridge company. And said president and directors, when elected, shall take an oath faithfully to discharge the duties of directors of said corporation, and continue in office for one year, and until their successors shall be duly qualified.

SEC. 5. *And be it further enacted*, That said president and directors shall have power to make and perform all necessary contracts for erecting said bridge, and carrying on all other business of said corporation; and they shall have power to appoint all officers, and employ such servants as may be necessary for managing the affairs of said corporation; and that the stockholders shall be individually liable in proportion to their respective shares for all contracts made, bonds, bills, notes executed by said president and directors in the name of said corporation, whether the same be under its seal or not.

SEC. 6. *And be it further enacted*, That if any subscriber of stock in said bridge company, shall fail to pay his installments as required by said president and directors, they shall have power to de-

clare such shares forfeited to the company; and after giving thirty days' public notice, to offer them for sale at public auction, for ready money, or so many as will be sufficient to pay the amount then due and called in. A sale thus made shall vest the purchaser with all the rights of the original holder, but shall not release such holder from the payment of any balance that may be due on his subscription, should the stock sold produce less than the whole amount subscribed therefor; and should the money called in be paid before a sale actually takes place, together with the costs incurred preparatory to such sale, it shall restore the stock to the original holder, notwithstanding the forfeiture.

SEC. 7. *And be it further enacted*, That the rates of toll for crossing on said bridge shall never exceed the present rates of ferriage at said ferry. And until said bridge shall be completed, the owners of said ferry shall enjoy all the profits arising therefrom, notwithstanding they may have subscribed the interest therein as stock in said bridge company.

SEC. 8. *And be it further enacted*, That said corporation shall and may hold annual meetings of the stockholders, at which the president and directors shall lay before them an account of their proceedings of the preceeding year, showing all disbursements and receipts of said corporation; at which or some other general meeting of said stockholders, the president and directors of said company shall be elected and at such meeting only shall the capital stock of said bridge company be in-

creased. Provided, that said company shall in no case exercise banking privileges.

Approved January 12th, 1832."

The said Florence Bridge Company was duly organized and constructed and operated a toll bridge for many years, until its pretended purchase by the complainants, the Memphis and Charleston Railroad Company.

Complainant was incorporated in Tennessee in 1846 (see charter made part of the bill, page 11 of the record), and in Alabama in 1850, and by its Alabama charter it was given the rights contained in the Tennessee charter, and especially the power relied on in this cause, viz:

"The said company may purchase, have and hold any bridge or turnpike road over which it may be necessary to carry the said railroad and when said purchase is made, to hold the said bridge or turnpike road on the same terms, and with all the rights which belonged to the individual, individuals or corporation from which said purchase may be made."

Section 23, Tennessee Charter.

Complainant alleges that under this power it "purchased from the said Florence Bridge Company its said bridge, and has, ever since said purchase, made some time in the year 1850, operated the bridge under the charter of the said Florence Bridge Company, having a toll bridge for that purpose and also a bridge above the toll bridge for the use of its railroad business."

No power in the bridge company to sell its fran-

chises and property is alleged or shown except the said power of the railroad company to purchase.

In 1832 Florence, north of the river, was a town of about 1,000 inhabitants, and Tuscumbia, south of the river, about the same size; Lauderdale county, north of the river had 11,000 population, and Franklin county, south of the river, about the same. In 1894 Florence had 7,000 population; Tuscumbia had 2,500 inhabitants, and Sheffield (founded in 1887 and situated between Florence and Tuscumbia) had 2,500 inhabitants. By the census of 1890 Lauderdale county, north of the river, had nearly 24,000, and Colbert and Franklin (formerly Franklin) more than 30,000 inhabitants.

In 1830 these counties were agricultural, producing probably 2,000 bales of cotton and a limited amount of corn and cattle.

Now the country is a manufacturing district. There are at Sheffield and Florence seven iron furnaces, whose tonnage it is stated is equal to the tonnage of the entire cotton crop of the south, a cotton factory, rolling mill, compress, wagon factory, buggy factory, pump factory, shoe factory, stove factory, steel rolling mills, fertilizer manufactory and flour mills; and Lauderdale county now also produces 10,000 bales of cotton annually, and Colbert as much.

In 1832 no railway had been constructed. In 1894 three railroads, the L. & N., the M. & C. (now the Southern), and the Northern Alabama, were in operation and a fourth graded, with superstructures ready for the rails. In 1894, in addition to thorough-fare tolls, 11,481 cars passed over the

railway portion of the Florence bridge, and in 1896, 21,834 cars.

The railroads extend east and west and especially north into the iron ore fields of Tennessee and south into the coke fields of Alabama, and haul the raw material, the iron and the coke, over the Florence bridge to meet and manufacture iron in the furnaces at Florence and Sheffield. See Record, pp. 115 to 145 inclusive.

Complainant, the railroad company, had been charging either exactly or a little less than the old ferry rates on the toll bridge. The people begged for a reduction, and applied to the courts, and at last to the legislature, where, complainant being represented by its attorneys, the act complained of was passed, reducing the tolls at a time when the population of the adjacent towns had increased seven hundred per cent. and traffic over the bridge had increased at least one thousand per cent., the reduction being to the charges made elsewhere for like services, to about sixty per cent. of the old rate.

The act is in words and figures as follows:

"AN ACT

To fix the maximum of tolls to be charged by the owners, lessees, or operators, of the road bridge crossing the Tennessee river, between the counties of Colbert and Lauderdale, and known as the Florence bridge, and to fix the penalty for demanding or receiving a higher rate of toll.

SECTION 1. *Be it enacted by the General Assembly of Alabama*, That the maximum rate of toll to be charged by the owners, lessees, or operators of the

bridge crossing the Tennessee river, between the counties of Colbert and Lauderdale, and known as the Florence bridge, shall be as follows: For each foot passenger, 5 cents; for children under 14 years of age and all pupils attending school, 2 cents; for each one-horse vehicle and driver, 15 cents; for each two-horse vehicle and driver, 25 cents; for each three-horse vehicle and driver, 30 cents; for each four-horse vehicle and driver, 35 cents; for each additional person in vehicle, 5 cents; for each horse, mule or animal of like kind, with rider, 8 cents; for each horse, mule or animal of like kind, 5 cents; for each cow, steer or animal of like kind, 5 cents; for each sheep, hog, goat or animal of like kind, 3 cents.

SEC. 2. *Be it further enacted*, That should the owners, lessees or operators of said toll bridge, by themselves or any of their agents, demand or receive from any person a higher rate of toll than is prescribed by this act, he or they shall forfeit to such person twenty dollars for each offense, to be recoverable before any justice of the peace or notary public and ex-officio justice of the peace of either of said counties of Colbert or Lauderdale.

Approved February 9th, 1895."

Immediately upon the passage of this act, five days after its approval, Complainant, the receivers of the Memphis and Charleston Railroad Company, by the direction and leave of the Hon. John Bruce, District Judge, commenced this suit "*to test the constitutionality and validity of said act*," naming as defendants The State of Alabama, William C. Oates its Governor, and William C. Fitts its Attorney-

General, as such Governor and Attorney-General. It having become the duty of A. H. Carmichael, circuit solicitor for the eleventh judicial circuit of Alabama, to prosecute the toll keepers of said bridge, for charging illegal tolls, prohibited by section 4151 of the Code of Alabama, the bill was amended by making him a party defendant to enjoin him from prosecuting these criminal cases. W. H. Gilliam, a citizen residing near the bridge, who protested against paying the illegal toll and threatened to bring a suit, was also made a party defendant by amendment. The bill was also amended about a year after suit was commenced by striking out the State of Alabama as a party defendant.

The prayer of the bill was that said act prescribing rates be declared repugnant to the constitution of the United States and null and void and injunctions issue as prayed for.

Injunctions duly issued restraining the State of Alabama, its Governor and Attorney-General, its Circuit Solicitor, and W. H. Gilliam and all persons whomsoever from any proceeding, civil or criminal, to compel complainant to obey said act prescribing tolls or to forfeit the franchises of complainant on account of its refusal to comply with said act.

Defendants moved to dissolve said injunctions, to dismiss the bill for want of jurisdiction and for want of equity,—demurred to the bill on many grounds for many reasons, for that the case was a suit against the State of Alabama, for that there were no proper parties defendant, the Governor and Attorney-General being charged with no duties or powers with reference to the said act, for that the alleged contract by which it was pretended that

complainant had purchased said bridge was illegal and void, and for other defects in the bill.

The court overruled said motions and demurrers and the defendants answered. Proof was taken and the cause submitted, and on the 15th day of April, 1897, the Circuit Court, Judge Aleck Boarman presiding, rendered a decree adjudging that said act prescribing rates on the Florence bridge was violative of the rights of complainant as the owners of said bridge, that it was invalid and unconstitutional and that the injunctions be made perpetual.

Defendants appealed from said decree, assigning forty-three errors made in said cause during its pendency in the Circuit Court, set out on pages 184 to 188 of the record.

Appellants on the 11th day of March, 1998, moved this court to advance said cause, which motion was duly granted and the cause set down for hearing on the 17th day of October, 1898.

A Suit Against the State.

That this suit is brought in defiance of the 11th amendment to the Constitution of the United States is shown in its inception (See prayer of the intervening petition, page 2 of the record) and is shown by the order of the District Judge which not only authorized the Receivers to commence this suit against "The State of Alabama," but directed them to so prosecute the same both in the Circuit Court and in the Supreme Court of the United States.

"In cases where a State is a party on the record

the question of jurisdiction is decided by inspection." Osborn v. U. S. Bank, 9 Wheaton 852.

The suit was commenced on the 14th day of February and all the pleadings, orders, decrees and proceedings in the cause were maintained as a suit against the State of Alabama for a period of one year, until the 30th day of January, 1896, when the court gave leave to amend the bill by dismissing the State of Alabama as a party defendant. It is true that William C. Oates, as Governor, and William C. Fitts, as Attorney-General, were also made parties defendant, but they were sued not as individuals for the purpose of preventing them from enforcing an enactment alleged to be unconstitutional, but they were brought in as Governor and as Attorney-General in their official capacity.

Paragraph 2 of the bill is as follows: "The said William C. Oates is now Governor of the State of Alabama, and said William C. Fitts is now Attorney-General of the State of Alabama, and this suit is brought against said State, Governor and Attorney-General, as such, to test the constitutionality and validity of the act to fix tolls on the Florence bridge."

The State has also a pecuniary interest. Costs were decreed against the officers of the State. It is inconceivable that the State will not reimburse these officers out of its treasury. Hence it is submitted that the steps taken by the Complainant, and by the Circuit Court indicate so clearly their purpose and effort to make the State a party and to bind the State through its officers by the decree of the Court that Complainants are estopped from

saying that this is not a suit against the State, but will be held to the meaning intent and purpose declared by themselves and that therefore the order of this Court should be to dismiss this cause because it was not only in effect, but actually a suit commenced and maintained against the State of Alabama.

In Pennoyer v. McConnaughy, 140 U. S. 1, it was held: "It is well settled that no action can be maintained in any Federal court by the citizens of one of the States against a State, without its consent, even though the sole object of such suit be to bring the State within the operation of the constitutional provision which provides that 'no State shall pass any law impairing the obligation of contracts.' This immunity of a State from suit is absolute and unqualified, and the constitutional provision securing it is not to be so construed as to place the State within the reach of the process of the court. Accordingly it is equally well settled that a suit against the officers of a State, to compel them to do the acts which constitute a performance by it of its contracts, is, in effect, a suit against the State itself."

A suit against the officers of a State as representing the State's action and liability and thus making it the real party against which the judgment will so operate as to compel it to specifically perform its contracts, cannot be maintained.

Reagan v. Farmers Loan & Trust Company, 154 U. S. 389.

One of the purposes of this bill is to declare the act invalid because it impairs the obligation of the

contract made by the State with the Florence Bridge Company. One of the clear purposes of the bill is to enforce by injunction the specific performance of the alleged contract between the State of Alabama and the Florence Bridge Company. (See section 9 of the bill, page 6 of the Record). Another purpose was to prevent the State from forfeiting the franchises of Complainant, by proceeding against Complainants directly for usurpation of charter. See prayer of amended and supplemental bills, pp. 29 and 39 of Record.

NOT A PROPER OR REAL CAUSE. PARTIES DEFENDANT NOT PROPER OR REAL PARTIES.

It is not sufficient as a general rule to bring in mere nominal parties.

If not a suit against the State, then this should be a suit against individuals to prevent them as officers of the State from enforcing an unconstitutional statute.

Smith v. Ames, 169 U. S. 518.

Reagan v. Farmers Loan & Trust Co., 154 U. S. 389.

But this is not a suit against individuals claiming to act as officers of the State and committing acts of wrong to the property of Complainant. The suit is brought against the State itself, and its Governor and Attorney-General, as such Governor and Attorney-General. The sixth, seventh, eighth and twenty-fourth demurrers, and fifth ground for dissolving the injunction, page 81, are included in the assignments of error making this objection to this singular proceeding.

The act complained of is very short, prescribing rates in one section and providing in the second that any person charged a higher rate may bring a civil suit for a small penalty What has the Governor or Attorney-General or the prosecuting Attorney to do with this act? What connection have either of these officers with this act which refers to an exceedingly small part of the alleged property of a corporation doing business in a small section of the State? The Governor is charged with no duty. The Attorney-General is not required by the act to enforce it. The prosecuting attorney brought in afterwards by amendment has nothing whatever to do with this act. He prosecutes crimes arising under other statutes and certainly he cannot be enjoined for doing his duty in this regard, nor could he have been made a party and so enjoined from enforcing the criminal laws of the State if this act had made the over-charge a misdemeanor instead of simply providing a civil remedy. The truth is that Section 4151 of Code of Alabama under which the indictments were found (See page 34 of Record) has no connection with nor reference to the act complained of. These officers have no interest in the *lis contestata*. Neither is it shown nor alleged that they ever threatened to do anything or could do anything more than the other officers of the State in other departments of the State Government.

This action was commenced five days after the approval of the bill. Improperly and improvidently commenced it was not an actual litigation. It was not a case brought by a citizen under the

forfeiture clause of the statute. It was not an indictment prosecuted to punish the servants of the Complainant for charging more toll than the laws of the State allowed. It was a desperate effort to attack the sovereignty of the State,—the validity of an act of the legislature,—when no cause of action had arisen which could properly invoke the exercise of the powers of the Courts to pass upon the validity of the act alleged to contravene constitutional rights.

The bill boldly and baldly declares that its whole purpose is to test whether the act of the Legislature is valid or not. Complainants refused to obey the act as the law requires all good citizens to do until it could be properly declared invalid by the courts. To do this might have shown that the reduced rates prescribed would really bring more revenue than the old rate.

The exigency was not an invasion of the property rights of complainant. The Legislature had passed the act, but nothing else had been done. Neither the Governor nor the Attorney General had said one word or could commit a single act of wrong to complainant when this bill was exhibited against the State of Alabama, and the Governor and Attorney General as such Governor and Attorney General were made parties for the sole purpose of having the court to try, under this most unheard of and extraordinary jurisdiction, the validity of the act.

We can find no case like it. In the Nebraska case, 169 U. S., 518, the AttorneyGeneral was a party defendant, but he was so made because he was a member of the board of transportion charged

by the act complained of with the specific duty of enforcing it. That was a suit by the stockholders of the corporation against the corporation and the board of transportation.

In the Kentucky case, Covington, etc., Turnpike Co., v. Sandford, 164 U. S. 578, the suit was by interested parties to compel the corporation to charge the prescribed rate.

In the Arkansas case, 156 U. S. 649, the action was commenced by patrons of the corporation to recover the penalty for the overcharge. This case is decisive of the proposition we urge, that the case at bar is not properly before the court and should be dismissed. It was there held, page 666, as follows:

"Sometimes in acting on this subject the State Legislatures have created commissions or boards of public works, with power to establish rates for the transportation of passengers and freight, and in such instances the course recommended by Mr. Justice Miller, already cited, may well be followed—that the remedy for a tariff alleged to be unreasonable should be sought in a bill in equity or some equivalent proceeding, wherein the rights of the public as well as those of the company complaining can be protected."

"But there are other cases, and the present is one, where the Legislatures choose to act directly on the subject by themselves establishing a tariff of rates and prescribing penalties. In such cases there is no opportunity to resort to a compendious remedy, such as a proceeding in equity, because there is no public functionary or commission which can be made to respond, and, therefore, if the com-

panies are to have any relief it must be found in a right to raise the question of the reasonableness of the statutory rates by way of defence to an action for the collection of the penalties."

St. Louis & San Francisco Ry. v. Gill, 156 U.S. 649.

Now the course above suggested as the proper course was open to complainant. He says many suits were threatened. As a matter of fact he does not show this, nor does he show any adequate reason for making W. H. Gilliam, a citizen who seems to be for the purpose of this suit, a man of straw, a party defendant. Gilliam says that he crossed the bridge, was forced to pay the illegal toll, protested against it, and threatened to bring suit for the twenty dollars. Was this enough to authorize this suit in equity and its decision upon a question involving the rights of so many people who are not and could not be made parties to this bill? It is what Judge Marshall, in Osborn v. U.S. Bank, 9 Wheaton 839, terms the "light and frivolous threats of an individual, not sufficient to warrant an injunction."

It seems also from the record that an indictment was found against the bridge-keeper. In this way, it is possible the question could have been properly raised. But not by alleging, as complainant does in his curious bill, that the grand jury of Lauderdale county, claiming to act as officers of the State, have committed acts of wrong, etc. Page 38, sec. 5, supplemental bill.

The other side is only this. A very small amount of property or income was involved if the

statute had been executed for awhile, and the chances are that the additional traffic resulting from the reduced rate would made the amount involved inconsiderable if anything.

Surely it was only fair and right to the State of Alabama—to this legislative act of the State; to the chief executive officers of the State who have been brought into court and charged with costs; to the people whose rights are affected by the decrees in this cause—that the act of the Legislature should stand as the law of the land until the jurisdiction of the courts could be properly invoked and exercised.

In the Texas case, 154 U. S. 366, the members of the Railroad Commission were made parties defendant, but they were charged by that act with the duty of making rates. The Attorney General was also made a party, but by section 19 of the act he was required to institute suits in the name of the State for the heavy penalties provided for in the act. And the prayer of the bill was to restrain him from bringing these prescribed suits.

In the New York case, 143 U. S. 517, the act itself contained a provision making it a misdemeanor to charge more than the prescribed rate, and the case was a criminal prosecution under this section of the act.

In the Minnesota case, 134 U. S. 418, there was a petition for a mandamus by the Railroad Commission which was invested with the power by the act to proceed in that way, the writ being for the purpose of compelling the corporation to observe the prescribed rates.

How unlike all the above cases or all the cases

upon this subject, is the case at bar! This case seems to be in the nature of an appeal from the Legislature to the court, as quickly taken as if it were meant to rely upon something like the veto power of the Executive instead of the solemn and final decision of the judicial power invoked in the proper and legal way.

The following observations of this court in the Michigan case, 143 U. S. 339, are directly in point. That suit, like this, was brought to test the constitutionality of an act of the Legislature and was commenced the very day the act went into force, while this suit was brought five days after the approval of the act. The court said, page 344, "The theory upon which apparently this suit was brought is that parties have an appeal from the Legislature to the courts, and that the latter are given an immediate and general supervision of the construction of the acts of the former. Such is not true. Whenever, in pursuance of an honest and actual antagonistic assertion of rights by one individual against another, there is presented a question involving the validity of any legislation, State or Federal, the decision necessarily rests upon the competency of the Legislature to so enact. The court must, in the exercise of its solemn duties, determine whether the act be constitutional or not; but such an exercise of power is the ultimate and supreme function of courts. It is legitimate only in the last resort and as a necessity in the determination of real, earnest and vital controversy between individuals.

Chicago, &c., Ry. Co. v. Wellman, 143 U.S. 339.

Said Allen, J., in The People of New York v. Canal Board of New York, et al., 55 N. Y. pages 394 to 397, "A court of equity has no supervisory power or jurisdiction over public officials or public bodies, and only takes cognizance of actions against or concerning them when a case is made coming within one of the acknowledged heads of equity jurisdiction." And, again it is not sufficient "that the legislature have enacted a law which, in the opinion of the attorney-general, is obnoxious to some of the provisions of the State Constitution, and under color of which he is apprehensive that a public body, of which he is a member, may at some time proceed and take action in a manner prejudicial to the interests of the State. The courts can not be called upon to pass upon the validity of a law, upon the mere suggestion that it is void, and that possible action may be had under it, and in advance of any proceedings had or threatened by the officials, who, if the law were valid, would be called upon or authorized to act. The appeal presents simply in this view a theoretical or speculative question, which, whatever its merits, can only be judicially decided when facts arise giving the court jurisdiction, and making a decision necessary, and giving it practical effect when made."

A court of equity will not interfere to prevent the invasion of a franchise before the establishment of the right at all, even where it is derived from an act of the legislature, if upon an inspection of the statute a reasonable doubt exists as to the power of the legislature to enact it. Courts of equity can not interfere to stay proceedings in criminal mat-

ters—nor in any case not strictly of a civil nature—nor to arrest the authorities charged with the execution of criminal laws.

Moses & Beebe v. Mayor of Mobile, 52 Ala. 198.

INJUNCTION WILL NOT LIE TO RESTRAIN THE ACTION OR DISCRETION OF EXECUTIVE OFFICERS OF THE STATE.

The Governor, the Attorney-General, and the Circuit Solicitor are constitutional officers of Alabama, invested with large political and discretionary powers by the Constitution and laws of the State. The act complained of devolves upon them no ministerial duties whatever. If they have any duties to perform arising out of this enactment, which is a matter of doubt, these duties are clearly not ministerial, but duties which require the exercise of judgment and discretion in matters governmeutal in their nature under such circumstances that all the authorities agree that its exercise is clearly independent of the other co-ordinate departments of the government and is not subject in any manner to their supervision.

Under our form of government one department makes the laws, another applies the laws in contested cases when a suit duly authorized by law presents in due form a cause appropriate for its cognizance, and the third department executes the laws. Each department is prohibited from exercising the duties of the other.

The President of the United States will not be enjoined from carrying into effect an act of Con-

gress alleged to be unconstitutional, nor will a bill having such purpose be allowed to be filed.

Mississippi v. Johnson, 71 U. S. 475.

State v. Lord, 28 Oregon, 498.

People, ex rel Southerland v. Governor, 29 Mich. 320.

Injunction in itself is not prerogative but jurisdictional. It is issued in cases where the court has jurisdiction—otherwise as preliminary or interlocutory to the final decree and to give effect and permanency to such decree. It is remedial and in aid of jurisdiction already attached.

28 Oregon, 516, supra.

The jurisprudence of the United States has always recognized a distinction between common law and equity as, under the constitution, matter of substance as well as of form and procedure.

Green v. Mills, 69 Federal Reporter, 832.

It is well settled that the court of chancery is conversant only with matters of property and the maintenance of civil rights. The court has no jurisdiction in matters of a political nature nor to interfere with the duties of any department of government unless under special circumstances, and when necessary to the protection of rights of property nor in matters merely criminal or merely immoral which do not affect any right of property. Ib. 857.

"Neither the legislative nor the executive department can be restrained in its action by the judicial department, though the acts of both, when performed, are, in proper cases, subject to its cogni-

zance." Ib. cited from the opinion of Chief Justice Chase, in Mississippi v. Johnson.

The judiciary has not the right to pass upon the constitutionality of laws as a mere means of settling abstract questions, and, even in the enforcement of private rights, it has not the power to interfere with the discretion vested in the other departments, or with the exercise of the political powers of those departments.

Ib. pages 862 and 863.

3 Amer. & Eng. Cases in Equity, pp. 546, 553.

State ex rel. v. Thorson, 68 N. W. Rep. 202.

No Court will Establish or Execute an Illegal Contract.

Neither the charter of the Florence Bridge Company nor any amendment thereof nor any general law of the State contains any power to sell or alienate its property or franchises.

It was held in V. & C. R. R. v. Vt. Central R. R., 34 Vt. 47 and 48, that if a contract is in violation of public law or against public policy in such sense as to make it void and of no effect to any intent, any person standing in a relation of interest to the subject matter of the contract and to be affected by this operation might set up and insist on such fatal vice in it for the purpose of clearing himself from the consequences of its being carried into effect.

Case v. Kelly, 133 U. S. 21.

South & North Alabama R. R. v. Highland Ave. & Belt R. R., Supreme Court of Alabama, November Term 1897.

The parties named as defendants to this cause are so disconnected from any interest in the subject matter that it is doubtful if this objection, although clearly appearing on the face of complainant's bill, can be raised. If this is a suit against the State, then it is possible that the attention of the court can be called to the void and illegal contract upon which the bill is based. The State could in a direct proceeding attack the complainant for the usurpation of the franchises of the Florence Bridge Company. That the State or its executive officers may be allowed in this case to suggest the violations of law committed by complainant in acquiring this property may be predicated from the fact that defendants are restrained by the amended bill, pages 29 and 39 of the record, from instituting any proceeding against complainant for the forfeiture of the franchise of the Memphis and Charleston Railroad Company in and to the said bridge on account of its refusal to charge the prescribed rates. In other words, while this is not a direct proceeding by the State to attack the franchises of the corporation, it seems to be an action by complainant to enjoin the State from any such direct proceeding. In such a case it would seem to be competent for defendants to show as in a direct proceeding that this alleged acquisition of the charter and the property of the Florence Bridge Company is void and illegal. Besides, the prohibitions of the Fourteenth Amendment refer directly to the action of the State whether by its legislative, executive, or judicial authorities, and therefore, whoever, by virtue of a public position under the

State government, depriues other of any right protected by that amendment, acts in the name and for the State, and is clothed with the State's power and his act is that of the State. C. B. & Q. R. R. v. Chicago, 166 U. S., 233 and 234.

All contracts contrary to public policy are void. A contract is void when it will not be enforced by the courts. If a court should enforce such a contract it would employ its functions in undoing what it was established to do.

There is a distinction clearly defined in the books between contracts merely *ultra vires* and hence invalid, and contracts which are also illegal. Illegal contracts are, in a sense, *ultra vires*, but they are something more, they are contracts of "an evil tendency."

Elliott on Railroads, Sec. 383.

Bishop on Contracts, Sec. 473.

Contracts absolutely void as contravening the long settled rule of public policy "are an absolute nulity and life cannot be given to them by any doctrine of estoppel or ratification."

Wood on Railroads, Vol. I, Sec. 172.

No court will establish or execute an illegal contract. No court will usurp or allow any usurpation of the legislative power of the government.

The charter is shown and relied on. There is therefore no room for prescription as to what fixes the rights of the public. The complainants show their grant, profess to be acting under it, and at the same time claim to do acts not authorized by it.

These claims are repugnant and cannot be sustained.

Toll Bridge Co. v. Osborn, 35 Conn., 21.

Spelling on Private Corporations, Sec. 18.

The contract set up in this case is illegal by the common law of the land and also by the statutes of the State of Alabama in existence at the time the contract was made. Section 1483, Code of Alabama, of 1852, enacts that no private corporation shall exercise any power not given in its charter nor enumerated in Section 1481. Sec. 1481 confers powers of succession, to sue and be sued, to hold, purchase and convey real and personal property limited by its charter or if not so limited such as its business requires, to appoint officers and agents and make by-laws. In construing an exactly similar statute in New Jersey, the New Jersey court held, 20 New Jersey Equity, 564, "The legislature has a policy in this matter, it is clearly declared, and the section must be taken as a prohibition of any acts not within the scope of the powers permitted. Contracts in contravention of it must be held to be illegal and of no binding obligation.

Morris & Essex Rd. Co. v. The Sussex Rd. Co. 20 N. J. Eq. 542.

The leading case on this subject is Thomas v. Railroad Co., 101 U. S. 71. This court there declared that where a corporation has by its charter a franchise intended in a large measure to be exercised for the public good, any contract which disables the corporation from performing these functions and which undertakes, without the consent of the State to transfer to others the rights and pow-

ers conferred by the charter is a violation of the contract with the State and is void as against public policy.

The most recent case in this court (L. & N. R. R. v. Ky., 161 U. S-, pp. 677, 691, & 2,) holds that in any such contract the parties are bound to show not only that the purchaser was competent to buy, but that the seller was vested with the power to sell, and that such a contract beyond the coporate powers of either party is beyond the corporate powers of both. So. also on this very point the case of State v. Consolidated Coal Co., 46 Md. 1.

Oregon R. R. v. Oregonian Ry. Co., 130 U. S. 1.

Penn. R. R. v. St. L. A. etc,, 118 U. S. 290.

Cen. Trans. Co. v. Pullman's Car Co. 139 U. S. 34.

In the State of Alabama, where these charters were granted and where the illegal contract was made, the doctrine is well settled and the decisions of the Supreme Court are very significant.

In the Grand Lodge of Alabama v. Waddell, 36 Ala. 313, it is said that courts of justice will not enforce contracts of corporations which they have no power to make, and no actions to enforce such contracts will be maintained. Again, it is not for courts, by tolerating the usurpation by corporations, to defeat the will of the Legislature. The doctrine of estoppel cannot be held to apply without clothing corporations with the ability to increase their powers indefinitely, by sheer usurpation. Such contracts are void, and no right of action can spring out of them.

Chambers v. Falkner, 65 Ala. 455.

Westinghouse Mach. Co. v. Wilkinson, 79 Ala. 314.

Among the later cases upon the subject is that of the Lanier Lumber Co. v. Reese et al, 103 Ala.628, in which McClellan, now Chief Justice, said: "Courts will not interfere in the enforcement of void contracts. The relief prayed cannot be granted without the establishment and execution of an illegal and void contract. It therefore cannot be granted at all, because no court will decree the performance or grant relief dependent upon proof of such a contract."

~~There seems to be a vage attempt to assert in the bill that the judiciary of Alabama have recognized in Johnson v. State, 88 Ala. 176, the power of sale set up in this cause. It is certainly sufficient to reply that the pleader in making out complainant's case failed to allege that the case of Johnson v. State, 88 Ala., cited by him, was expressly disaffirmed and overruled in the subsequent case of Johnson v. State, 91 Ala. 70.~~ The controlling question, and the controlling principle is that if the relief prayed for cannot be granted without establishing the void and illegal contract it will not be granted at all. Complainant alleges the acquisition of the franchises and property of the Bridge Company only by virtue of the void and illegal contract.—Sect. 7 of bill, page 5 of Record. The final decree by its terms, establishes the ownership of the property thus acquired in defiance of a statute of the State, and of public policy.

Prescribed Rates Reasonable.

The following table (see Record, p. 4 & 6,) show the old and the prescribed rate:

FLORENCE BRIDGE—RATE OF TOLL.

	Old Rate Still Charged.		Prescribed Rate.						
Horses, mules or cattle, each	$ .10		$ .05						
One person	.10		.05						
One man and horse	.20		.08						
			1 additional person.		2	3	4	5	etc., etc.
One horse, buggy, cart or dray	.30	and driver	.15	$ .20					
Two horse carriage or buggy	.50	" "	.25	.30	$ .35	$ .40			
Two horse carriage, capacity 6 persons	.70	" "	.25	.30	.35	.40	$ .45	$ .50	
Two horse or ox wagon	.60	" "	.25	.30	.35	.40	.45	.50	
Four horse or ox wagon	.70	" "	.25	.30	.35	.40	.45	.50	
Six horse or ox wagon	1.00	" "	.35	.40	.45	.50	.55	.60	
Special school tickets	.04		.02						
Sheep, hogs or goats	~~.06~~ .10		.03						

This case is within the influence of the principles announced by this court in the Charles River Bridge Case, 11 Peters, 420.

In that case the rule of strict construction of corporate grants was adopted which has been followed by this court in the cases of Thomas v. Railroad Co., 101 U. S. I., and kindred cases up to the recent case of Pearsall v. Gt. No. Rwy. Co., 161 U.S. 646, in which the Charles River Bridge case was cited.

Chief Justice Taney said that it would present a singular spectacle if, while the courts of England were restraining within the strictest limits, the spirit of monopoly and confining corporations to the provisions plainly given to them in their charters, the courts of this country should be found enlarging these privileges by implication and construing a statute more unfavorably to the public and to the rights of the community than would be done in an English court of justice.

"The whole community are interested in this inquiry, and they have a right to require that the power of promoting their comfort and convenience and developing public prosperity by providing safe, convenient and cheap ways for the transportation of produce and for purposes of travel shall not be construed as having been surrendered or diminished by the State unless it shall prove by plain words that it was intended to be done."

This court held further that it was competent for the Legislature to authorize the construction of a free bridge so near the bridge of the complaining corporation which had the right under its charter

to charge tolls, as practically to deprive the first company of all tolls and to destroy its franchise to collect tolls.

The Florence bridge does not seem to have been organized by a company of adventurers for the purpose of making money. This appears from the fact of the limited population and business at the time the charter was granted and the bridge constructed. It appears from the charter that the enterprise was a local one, the books to be opened at the Eagle Hotel in Florence and the company to be organized when the small sum of sixty thousand dollars should be subscribed. It appears also from the fact that the stockholders were made individually liable for contracts made by the corporation. The Memphis and Charleston railroad was not extended to Florence solely in the interest of that corporation; it might be affirmed that it was not constructed to Florence as a money-making adventure. Section 2 of the Alabama Charter, Record, page 21, provides: "And be it further enacted, That in the event the said road shall be located through Tuscumbia it shall be the duty of the company to construct a branch to Florence, and in the event the road shall pass on the north side of the Tennessee river near Florence, it shall be the duty of the company to construct a branch to Tuscumbia, provided the subscriptions in the town or county applying for such branch shall be sufficient to pay the cost of the same."

In consideration of this charter and the other rights granted therein, complainant undertook to

construct and operate five miles of railroad including within this short distance the expense of a bridge over a river a half mile wide. The public on either or both sides of the river agreed to subscribe the money necessary to construct the road. Clearly it was built for their convenience and for their prosperity. Clearly the corporation contracted to construct and continue this line including the pontage over the river, whatever pecuniary advantage or loss might result.

The learned counsel for the appellees in the Nebraska rate case just decided insisted in that case that where there was the right to charge tolls not limited by any express provision of the charter there was also an implied right to charge such tolls as amounted to a full return on the costs of construction or the investment made. But surely no such right can be implied from a charter like this which obliges the corporation to construct a short branch road and to maintain it, and which, with reference to bridge tolls, confers on the corporation the right to hold only upon the terms of the bridge charter a bridge chiefly constructed for the benefit, the convenience and the comfort of the people directly interested in it.

The bill was prepared on the theory that there was a contract between the State and the corporation, and long depositions were taken by the complainant to show that the rates on the bridge did not exceed the ferry rates, but there is no such contract.

The Georgia Railroad and Banking Company v. Smith, 128 U. S., page 174.

And if there had been, such contract right would not have passed to complainant even if it had made a legal purchase of the Florence Bridge.

Covington Turn-pike Company v. Sandford, 164 U. S., page 586.

The present doctrine of this court is that the charge must be reasonable, the rights of the public considered, and that each case must be examined in the light of its peculiar facts and circumstances.

Smith v. Ames, 169 U. S., page 466.

Covington Turn-pike Co. v. Sanford, 164 U. S., page 578.

Ragan v. Farmers' Loan and Trust Co., 154 U. S., page 362.

Grand Trunk Railway v. Wellman, 143 U. S., page 339.

Budd v. New York, 143 U. S., page 517.

Chicago, Milwaukee, etc., Railway v. Minn. 134 U. S., page 418.

Dow v. Beidleman, 125 U. S., page 680.

These cases establish, First, That a legislative regulation of rates is presumably reasonable, Judge Brewer having observed that "it is not to be supposed that the legislature of any State will ever engage in the deliberate attempt to cripple or destroy institutions of such great value to the community as railroads, but will always act with the sincere purpose of doing justice to owners of railroad property as to other individuals."

154 U. S., page 395.

"Hence it has been conceded that when cases have been presented in which it had been claimed that the rates were unreasonably low, but not clearly shown to be so, the court has declined to interfere."

169 U. S., page 515.

And hence it is the settled doctrine that the legislature has the right to fix rates and the extent of judicial interference is to protect against unreasonable rates.

Chicago, etc., Ry. v. Wellman, 143 U. S., page 339.

The basis of all calculations as to the reasonableness of the rates to be charged by corporations maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public.

Smith v. Ames, 169 U. S., page 546.

The most salient and striking point about this case is that the prescribed rates apply merely to a small portion of the property. The regulation is only of the tolls on the toll bridge which is valued by complainant at about one-fifth of the value of the entire structure, although it is really worth much less. It is a matter of proof that there was first a flat boat and then a horse ferry and then a steam ferry and then a toll bridge and then a railroad and toll bridge combined affording transportation across the river at Florence. It is a matter of common knowledge that persons and things are in this age transported on the improved highways called railways. All the traffic that goes over the

rail portion of this bridge is undisturbed by this act of the legislature. All the profit that can be made by the railway in this rapidly developing and flourishing country is not in the least reduced by this act of the legislature. If there had been intended a wanton and unreasonable invasion of complainant's rights, or the taking of their property, why should not the legislature have prescribed rates on the railway part of the bridge over which it is shown that 21,000 cars passed last year?

When complainant filed his bill and in the first proof taken by him he made no mention of the railway or its value or its earnings. It is suggested that it is doubtful now if the state of the pleadings will allow the evidence he has introduced on this subject, to which objection was duly made. But after demurrer on this account and without amendment to the bill evidence was offered. It is chiefly to be found in the curious table made by the Auditor of the company and given on page 159 of the Record.

But this evidence is inadequate.

It does not show what are the net earnings of the Memphis and Charleston Railroad Company, the entire line, or even that part of the line in the State of Alabama, or even the earnings of the branch road from Tuscumbia to Florence, or fairly even the earnings on the railway part of the bridge. Indeed, there is no allegation in the bill to make such evidence relevant.

In St. Louis and San Francisco Railway v. Gill, 156 U. S. 649, the effort made to declare invalid an act of the Arkansas legislature failed for this very

reason, viz: that that the evidence was restricted to a part only of the railroad. This Court in that case affirmed the reasoning of the Supreme Court of Arkansas in Railway Company v. Gill, 54 Ark. 101, in which it was said, "The appellant cannot claim the right to earn a net profit from every mile, section or other part into which his road might be divided. It can only claim a profit from the operation of its entire line, and attack as unjust an act that denies it the right to fix such rates as will yield a profit upon its aggregate business. The corporations owning the several parts of the road were disolved years before it was passed. In their behalf no cause of complaint can exist."

This legal conclusion is illustrated and is made necessarily applicable to this case because the attempt is made to charge the Florence Toll Bridge with a portion of the general expenses of the entire Memphis and Charleston Railroad. (Pages 160, 161 and 162 of the Record.) And because the Florence Bridge has been converted into a railroad bridge and made a part of Complainant's railway line. See Fink & McGehee, Receivers, v. Clark & Malone, Tax Assessors, U. S. Cir. Ct. of Appeals, 5th Circuit, November Term, 1897. See Contracts for bridge construction, pp. 169 to 172 of Record.

Complainants show on the face of their bill that they have no Charter right to the bridge. If they have acquired it at all, they purchased it and hold it as they hold any other property of which they have acquired the title and possession by lapse of time. It has become consolidated and absorbed in the general railway which they own, and of which

it is a part. Hence the reduction of rates on the bridge, if otherwise reasonable, must amount to enough to affect their entire earnings, otherwise they cannot complain.

The attention of the Court is called to the persons who testify for complainant. As to the value of the bridge no engineer is brought in to testify. As to the earnings, no freight agent. The General Superintendent and the Auditor testify, whose sole knowledge is derived from reports made to them of the operation of these properties. This is not the kind of evidence that ought to be sufficient to overturn an act of the legislature, especially when upon investigation and analysis it will be found to be untrue, contradictory and misleading.

The remarks of this Court in Chicago, etc., Railway Company v. Wellman, 143 U. S., page 343, will be found significant in the consideration of this case. "Is the validity of a law of this nature dependant upon the opinion of two witnesses, however well qualified to testify? Must court and jury accept their opinions as a finality? Must it be declared as a matter of law that a reduction of rates necessarily diminishes income? May it not be possible—indeed does not all experience suggest the probability that a reduction of rates will increase the amount of business and therefore the earnings?"

The value of this bridge is about $200,000. In the tables prepared by the servants of this complainant this value is fixed at $230,000, but fortunately we have the contracts in evidence under

which this bridge was built which show its cost and value beyond controversy. The bridge was rebuilt about 1892. The cause of this rebuilding was to afford a safe way for the increased railway traffic that commenced to pass over it after the L. & N. was constructed into Sheffield and Tuscumbia, and after its contract for the use of the bridge. Before this reconstruction, as will be found from the record, page 158, the entire value of the foot bridge was placed at $26,278.62, and of the railroad bridge $92,093.52. Total, $118,372.14.

It is submitted that it was not necessary so far as the foot bridge was concerned to make these improvements, and hence the necessary value of the foot bridge is only about $26,000 instead of $51,000. This view is confirmed by the character of the contracts made for the new bridge. It was to be of iron and steel, capable of carrying a live load of not less than two ninety-two ton consolidation locomotives coupled together, followed by a train weighing not less than 3,400 pounds per lineal foot, in motion, with an additional load of 1,200 pounds in motion for the highway. Contracts, pp. 169-172. Here it is clear that complainant has converted this bridge from a toll bridge into a railroad bridge which will sustain the heaviest locomotives and trains of modern construction. Indeed, in the case of Clark and Malone, Tax Assessors, v. McGhee and Fink, receivers of the Memphis and Charleston Railroad Company, decided in the Fifth Circuit of the United States, November Term, 1897, complainant alleged in his bill referring to this very bridge, "that the thoroughfare feature is a mere incident

of the whole structure, the chief office, purpose and use of the bridge being for the passage of trains." And the Court held as follows: "The bridge is certainly not an ordinary toll bridge owned and operated by a toll bridge company,—it is certainly a very substantial and necessary *railroad bridge* owned and operated by a railroad company." It would seem, therefore, unnecessary to say more or to cite authorities on the proposition that in any inquiry to show whether complainant has been deprived of his property without process of law by this act of the legislature it is necessary to take into consideration the earnings of the entire structure, railway and thoroughfare.

Railway Companies v. Keokuk Bridge Co., 131 U. S. 389.

Bridge Proprietors v. Hoboken Co., 1 Wallace, 116.

In a similar case reversed on other points but not on this point by this Court, it was so held, viz: That while it was not necessary to include the earnings of the ferry, although the bridge company owned it yet, it was essential to consider what was made on either part of the bridge itself. That where foot and wagon ways are a part of a railroad bridge the receipts from the entire structure must be considered to determine whether an act regulating the tolls thereon will reduce the receipts to less than the operating expenses so as to constitute a taking of private property for public use without compensation.

Commonwealth v. Covington & Cin. Bridge Co., 21st S. W. Rep., p. 1042.

The following table is submitted as showing the real value of the bridge:

13 Span iron bridge	$79,500.	Contract page, 171 Record.
Draw, 412 feet	50,075.	Contract page 169, Record.
Piers	60,000.	Pegram and Plants Deposition.
	$189,575.	

But this estimate of value of piers is too high. Note that old piers are worth $1,440 each, and new $2,880, page 179, top of page, and note that the piers of the original toll bridge cost probably only $29,900. See p. 153 of Record.

Now add to this about $11,000, masonry on the piers shown on pages 157 and 158, and we have the real cost and value of this bridge, viz., about $200,000.00.

The $13,172 on page 157, and shown in contract on page 173, ought not to be included in this estimate because it was for a viaduct approach to the Florence bridge. A kind of iron trestle not extending over the river and no more a part of the bridge than the high embankment with which it connects. The real bridge over the river, 2,000 feet between abutments, while entire length of railroad part, including this trestle or approach, is 2,600 feet.—Pegram's depo., p. 85 of Record.

In the contract between the L. & N. Railroad and the M. & C. Railroad the entire value of the structure is put at $230,108.30, but in this contract it was manifestly advantageous for the complainant to have the bridge valued as highly as possible in order to receive interest upon a larger amount from the L. & N. as provided in the contract, and the L. & N. having no other way of getting its trains over

the river except by using this bridge or building a new one would yield something on the point of valuation in order to secure this pontage. Pegram admits that this valuation was on a basis of revenue not cost. See p. 87. But whether the valuation be $200,000.00 or $230,000.00, the complainant concedes that the gross earnings on this bridge for one year are at least $10,654.52. See page 153. Take from this $1,765.81, 40 per cent. reduction of tolls on the roadway and $8,888.71 remain. Add 20 per cent. of $2,648,72 for increase travel on account of deduction of tolls. See Pegram's depo., p. 86, and the gross earnings are $9,418.45.

The expenses, even from the doctored figures made by the Auditor do not exceed for the railway $1,601.93 (See table, page 159), and for the highway $2,268.63 (See table, page 160), in all $3,870.56, which subtracted from $9,418.45 leaves $5,537.89, which is more than 2¾ per cent. on $179,021.77, the value assessed by complainant in its table, or more than 2¾ per cent. on the actual cost of the entire bridge as shown by the figures I have given taken from the contracts for its construction.

Can this be a confiscation of the property set out by complainant in his bill? As long as these profits remain with the constantly increasing profits in a developing country is there any danger? This is the case made by complainant. The actual case is largely different.

The table of earnings and expenses railway part of bridge, p. 159 is manifestly incorrect. The witness seems to apologize for it (page 147) as he ought to do. The M. & C. earnings are reduced to a rate

for half a mile of railroad on a basis of the entire mileage of 292 miles. But interest is charged up on the basis of the highest cost of the bridge, this half mile being segregated from the balance of the line. Now, clearly, each half mile of the M. & C. Railroad, including the bridge, did not cost $179,-021.78, or each mile twice that sum, $358,043.56. And yet this is the absurd result of the Auditor's table. For if the traffic is calculated on this basis so ought earnings to be. But we can freely assume that $40,000 for one mile, or $20,000 for half a mile is a fair estimate of the cost of the M. & C. R. R. The evidence is that the bonded debt is $20,000 per mile, (p. 151). The Auditor's table might be more fairly stated as follows:

	93-4	94-5	95-6
Traffic M. & C. ½ mile rd..	$ 1,208.61	$ 820.79	$ 870.46
Rental	5,020.16	5,368.30	5,369.52
Total gross	6,228.77	6,189 09	6,239 98
Operating expenses	1,607.61	1,564.87	1,601.93
Net	4,621.16	4,624.22	4,638.05
Interest on $20,000 value of ½ mile of railroad at 6 per ct.	1,200.00	1,200.00	1,200 00
Net gain	3,421.16	3,424.22	3,438.05

The half mile of railroad has paid nearly 25 per cent. when its net earnings are estimated on the same basis that its traffic is estimated. Apply this net earning to the roadway earnings and that will pay also 7 per cent.

But the Auditor's tables are incorrect in other ways. Who can believe that the traffic of the M. & C. over the bridge is worth less to that company

than the traffic to the L. & N. is worth to the Louisville Company. And yet the latter pays over five thousand a year.

Besides if the operating expenses are correctly set out, the table should be stated as follows:

	93-4	94-5	95-6
Operating expenses	$1,607.61	$1,564.87	$1,601.93
Of this the L. & N. paid, (See contract, sections 6 and 7, pp 176-7, and table of wheelage. p 163)	43% 691 27	51% 798 08	70% 1,121.35
Leaving to be paid by the M & C	916 34	766 79	480 58
Subtract from total gross, viz	6,228.77	6,189 09	6,239.98
We have net to M. & C..	5,312.43	5,422.30	5,759.40

Or about 28 per cent. on $20,000 the cost of one-half mile of railroad, or more than 3 per cent. on $179,000, complainant's estimate of cost of Ry. part of bridge.

We add some tables which certainly include every item of expense shown by the testimony, or which could be lugged into this case. It is insisted that there is no competent evidence to warrant the admission of the item of expense in these, or any tables entitled General Supervision. And that the total expenses of the railway portion of the bridge for years - - - 93-4 94-5 95-6

amount to	$1,339.27	1,284.34	1,281.70
of which the L. & N. paid	43.2%	51.06%	70.12%

These calculations are made and submitted to show that in the best possible case that can be made for complainant there is no confiscation of his property, but that he makes more than a fair return

upon its value in any fair statement of his profits and expenses.

OPERATING EXPENSES—RAILROAD PART OF BRIDGE. FOR 1893-94.

Roadmaster	$1,650 00		
Supt Bridges and Buildings	1,201 50		
	$2,851 50		
292 miles track	Bridge	$ 4 49	
Supervisor track 100 miles	"	4 90	
Engineer for draw		513 00	
Oil, waste, lamps and other supplies		31 52	
		$553 91	
Railroad proportion 78.4%			$ 434 27
½ Salary day toll keeper watchman, See L. & N. Cont.			256 50
½ " night " " " " " "			256 50
			$ 947 27
Painting necessary every 3 years, 78.4%. Chargeable to Railroad part of bridge, 3 years, $1,500.00; 1 year, $500.00 x 78.4%			392 00
			$1,339 27
General supervision, taxes, etc., based on earnings.			
Total general expenses	$ 204,971 23		
Gross earnings—Entire line	1,274,817 78		
Gross earnings—Railroad part	6,579 26 or .516%		
.516%, $204,971 23			1,061 65
Total Expense—Railroad Part			$ 2,400 92

OPERATING EXPENSES—RAILROAD PART OF BRIDGE. FOR 1894-5.

Roadmaster	$1,620 00
Supervisor bridges and buildings	1,242 00
	$2,862 00

292 miles track		Bridge,	$4 85
Supervisor track 100 miles	970 00	"	4 81
Engineer for draw			486 00
Oil, waste, lamps, etc.,			22 63
			$518 29
Railroad proportion, 78 4% of 518 29			$406 34
½ Salary day toll keeper (watchman)			243 00
½ " night " " "			243 00
			$892 34
Painting necessary every 3 years, 78.4%. Chargeable to Railroad part of bridge, 3 years, $1,500; 1 year, $500 x 78.4 %			392 00
			$1,284 34

General supervision, taxes, etc. based on earnings.

Total general earnings	$ 154,351 95	
Gross earnings—Entire line	1,202,272 58	
Gross earnings—Railroad part	6,191 44 or 515%	
.515% of 154,351.95		794 91
Total Expense—Railroad Part		$2,079 25

OPERATING EXPENSES—RAILROAD PART OF BRIDGE.

For 1895-6.

Roadmaster	$1,620 00		
Sup't bridges and buildings	1,242 00		
	$2 862 00		
292 miles track		Bridge,	$ 4 85
Supervisor track 100 miles		"	4 81
Engineer for draw			486 00
Oil, waste, lamps, coal, etc.,			19 26
			$514 92

Railroad proportion, $614.92, 78 4 %	$ 403 70
½ Salary day toll keeper (watchman) see L & N Cont.	243 00
½ " night " " " " " "	243 00
	$ 889 70
Painting necessary every 3 years, 78.4 %. Chargeable to Railroad part of bridge, 3 years, $1,500.00; 1 year, $500 00 x 78 4%	392 00
	$1,281 70
General supervision, taxes, etc , based on earnings:	
Total general expenses ... ...$ 231,808 27	
Gross earnings—Entire line... 1,348,538 31	
Gross earnings—Railroad part. 6.241 11 or .463%	
.463 % of $231,808.27	1,073 27
Total Expense—Railroad Part	$2,354 97

EARNINGS—RAILROAD PART OF BRIDGE.

(See page 147, Plant's Deposition.)

	1893-4	1894-5	1895-6.
Traffic M. & C. R. R	$1 208 61	$ 8:0 79	$ 870 46
Rental, L & N. R. R.	5.370 65	5,370 65	5,370 65
Articles 3 & 4 p. 175-6. 6% Int on ½ of $179,021.79 See page 158.			
	$6,579 26	$6,191 44	$6,241 11
See Article 6, p. 176. & table p. 163. Add L. & N. proportion of expenses for operating Railroad part of bridge.	1,037 20	1,061 66	1,651 30
	$7,616 46	$7,253 10	$7,892 41
			Total earnings railroad part.
1893-4—43 2% of $2,400 92	—$1,037 20		
1894-5—51.06% of 2.079 25	— 1,061 66		
1895-6—70 12% of 2.354 97	— 1,651 30		
Total Earnings	$7,616 46	$7,253 10	$7 892 41
Total Expenses	2,400 92	2,079 25	$2.354 97
Net Earnings	$5,215 54	$5,173 85	$5,537 44

Interest—			
Valuation of $179,021.79.....	2.91%	2.89%	3.09%
Or on a valuation of $20,000 for the half mile of railroad about	26%	26%	28%

It is singular that the Auditor would not set out the items of the operating expenses on the railway part of the bridge, as he so carefully and elaborately did of the roadway part of the bridge on pages 160 and 161 and 162 of the Record. The query is whether if he had done so it would not appear that some amounts set out in the roadway expenses were not also included in the railway expenses? At least the court was entitled to have this done. The proof must be clear. There must be no evasion or subterfuge. This court has always declined to interfere in these cases unless it was clearly shown that the rate was unreasonably low. If the toll bridge could be separated from the entire structure, still the rates are reasonable. The evidence about this toll bridge is very singular. It is alleged in the bill that the toll bridge is worth $125,000. Pegram in his deposition, pages 185 and 186, is so anxious to sustain the allegations of the bill that he uses the very words of paragraph 10 of the bill in giving his testimony, statement, argument, figures and all. But Pegram seems to be discredited by the statement made on page 88 in which he says absolutely that "we have no net earnings on the bridge, but are running at a loss. Now even the auditor admits in table page 159 a net return of 2½ per cent interest on the railway part of the bridge, and in his table page 160, that the ~~operating expenses~~ net earnings of the roadway part of the bridge varied from 1.6 per

cent. one year to 4.2 per cent. in 1895, and yet Pegram gives certain figures and makes certain tables that must have been taken from the books of the company.

Another curious statement of the value of the toll bridge is taken from the auditor's testimony. He would be expected to do better for his company in the matter of figures than any other witness, and he does not fail in this expectation. He makes the value of the wagon way $176,000.00. (See pages 150 and 163), which is really about the value of the entire structure. The singular thing is the suspicious statement also made by him in the same breath (page 150) that the railroad portion of the bridge is worth $179,000.00; therefore, he has given us a bridge worth in all $355,000.00 necessarily, which is so much more than the contracts show it cost and the company valued it in its contract with the L. & N. Railroad, that the auditor's statements, and testimony, and figures are reduced to a bare absurdity.

This is probably an excellent place to call the attention of the court to the valuations of this bridge by complainant himself and by these witnesses for another most important purpose. Sec. 3972 of the Code of Alabama requires railroad property to be valued at its actual value and the receivers of railroad companies to so return their property for taxation. The record in the case of Clark and Malone against complainant, in the Circuit Court of the United States, Fifth Circuit, decided at the November term, 1897, shows that this Florence branch of 6.80 and 1.70 miles of

railroad, the whole of it including this very bridge, was returned year after year, under oath, for taxation at the value of $25,500.00.

The jurat to these returns is in due form. It recites that affiants personally appeared, and being duly sworn, depose and say "that the value as stated is a full, fair and just appraisement of the same. This affidavit was made and subscribed in 1897, by R. B. Pegram, superintendent, and A. H. Plant, auditor, the two witnesses relied on by complainant in this cause; 1896 again by said Pegram and Plant, witnesses; in 1895 by Pegram; and in 1893 and and 1894 by C. M. McGehee and Henry Fink, the complainants in this cause.

In Pegram's deposition, page 164, he was asked as to what this property was given in for taxation, and referred this matter to Mr. White, the law agent of the company, who answered that it was assessed at $7,500 per mile. Page 174. Therefore the valuation placed by the company upon this bridge is less than $3,750.00—that is, the entire bridge, railroad and thoroughfare.

When complainant in this cause attempted to separate the toll bridge from the railway part in as much as toll bridges are taxable in Alabama by the county assessors (Code of 1886, Sects. 3911 and 3976) an effort was made for the first time by tax officers, as shown by the case from the 5th circuit, to tax this toll bridge, but complainant has so far successfully resisted this effort on the ground that the toll bridge was only a very small incidental feature of the railroad bridge. However this may be, this court has decided that what property is

worth for income and sale, especially in a State which requires it to be given in at its real value, it is also worth for purposes of taxation. And the evidence is clear and undisputed in this case that this property, which the auditor says is worth $355,000.00, is given in at less than $3,750.00. It is suggested that such wide departures in valuations in statements, requiring an oath to support them, will cause this court to reject the evidence of the witnesses Plant and Pegram wherever there is any reliable source of information from which to derive the truth.

The real value of the toll bridge may be found in the Record. It appears from the table at the head of page 156 and from the contract between the L. & N. Railroad and the M. & C. (page 175) third section, that the value of the foot bridge was assessed at $26,278.62. The railroad bridge at $92,093.52. Total, $118,372.14. Now then at this time and place there was a toll bridge capable of doing all the work of a toll bridge, whose value was fixed by engineers of both companies at $26,278.62. In order to make the valuation $51,083.34, the assumed value used in the ingenious tables of the Auditor in this case, there was an arbitrary addition of improvements to the actual value of $24,804.72. What were these improvements for? Clearly and solely to construct a railroad bridge capable of bearing the strain of two of the largest known locomotives coupled together, followed by a moving load of three thousand pounds to the foot. In all these improvements or in the new construction of the bridge there was added only as much more as was

sufficient to sustain an additional load of one thousand pounds for the highway. In other words the bridge was constructed to all intents and purposes regardless of the highway part. The railroad bridge was constructed and it included as an incidental feature a highway where the receipts from toll would probably pay the operating expenses of the bridge and whose toll keepers could act as watchmen and whose facilities would aid in the business development of a section whose resources and business was to a large extent tributary to this corporation.

Insisting that the best evidence in this case is the evidence of the engineers of the two corporations which shows that the value of the toll bridge was about $25,000.00, we go to the question of what the expenses of its operation are,—and here we are involved in the same confusion from the conflicting statements of the complainant and his witnesses that we have suffered about the value of the bridge. The tables on page 23 show that the total expenses of the operation of the bridge were, for 1892 and 1893, $1,771.22; for 1893–4, $1,723.19; for 1894–5, $1,482.68.

The witness Pegram testifies (table, page 89) that the expenses of operating the toll bridge for a year at Florence was $1,262.50.

The table of the Auditor, on page 160, has increased these expenses for the toll bridge for the years 1893–4 to $2,299.16; 1894–5, $2,219.90; 1895–6, $2,268.63. He cleverly manages to make a small net loss if the earnings were calculated at the proposed rate for each of these years, although

a similar table made a part of the bill on page 23 shows that there will be small net earnings for each of said years. An examination of the figures made by the Auditor will show that he arrives at these results partly by ignoring that section of the contract between the L. & N. and the M. & C., which requires the former company to bear a proportion of the operating expenses of the bridge, and also by adding an item of about five hundred dollars on account of general supervision and taxes, which should not be included at all in the operating expenses of the bridge. So far as the taxes are concerned, the entire railway and thoroughfare pays less than forty dollars per year, as shown by the testimony before mentioned. So far as the general supervision is concerned, the item of $204,971.23, it is not shown of what it was composed. What salaries, what improvements, where made and on the authority of Chicago, &c., Ry. Co. v. Wellman, 143 U. S. 345, it ought not to be considered in this case. The facts with reference to the earnings and operation are best shown by the annexed tables, which include every possible item of expenses as shown in the testimony in this cause. In the tables we have made the income and expenses for the years since the adoption of the act are taken. The act of the legislature of course is not and can not be retroactive. It refers only to time which shall take place after the passage of the act.

The following tables are submitted in lieu of the Auditor's tables, Nos. 216, 17 and 18, pages 160–1 and 2. The Audit[illegible]'s recklessness in adding to the expenses of the r[illegible]way, so as to show a net loss,

is shown by his making the footway proportion of the expenses 22.2% instead of 21.6% as is clearly required by section 6 of the contract (p. 176). Is it possible he really made such an error against his company on his books? He fails also to charge one-half the salary of the toll keepers to the railroad portion of the bridge, and Pegram admits in his sworn statement (p. 89) that one of the toll keepers at least is also a watchman. It is believed that both of them are. Although, for the sake of argument, we include in the following table the item of the General Supervision, we insist it ought to be stricken out:

EXPENSES—OPERATING, ETC.

1893-94. (No. 216.)

216 should be—			
Roadmaster	$1,650 00		
Supt. Bridges, etc	1,201 50		
292 miles	$2,851 50	Bridge proper 2,614 ft.	$ 4 49
Supervisor tank 100 miles	$990.00	Bridge proper 2.614 ft.	4 90
Engineer for draw			513 00
Oil, waste, etc			31 52
			$553 91
Footway proportion 21.6			$ 119 64
½ salary day toll keeper (watchman), see L. & N., cont.			256 50
½ " night " " " " " "			256 50
			$ 632 64
Renewals and paintings.			
Flooring footway be removed every 5 years.			
100,000 feet lumber @ $12.00	$1,200 00		
Labor, nails, etc	430 00		
1-5 off	$1,630 00	—for 1 year	326 00

Painting every 3 years, 21.6%.
Chargeable to footway cost, $1,500.00.
1 year $500.00 x 21.6%..... 108 00

$1,096 84

Gen. supervision, taxes, etc., based upon earnings—
Total general expenses.....$ 204,971 23
Gross earnings, entire line.... 1,274,817 78
Gross earnings, footway..... 3,113 71 or 244%.
244%. of $204,971.23..... 550 13

$1,616 77

EXPENSES—OPERATING, Etc.

1894-95. (No. 217.)

Roadmaster.....$1,620 00
Supt. Bridges and Bldg.... 1,242 00

292 miles track.....$2,862 00 Bridge...$ 4 85
Supervisor track, 100 miles. 970 00 " ... 4 81
Engineer for draw..... 486 00
Oil, waste, coal, etc..... 22 63

$518 29

Footway proportion, 21.6%. of $518.29.....$ 111 95
½ salary of day toll keeper (watchman), see L. & N. cont. 243 00
½ " " night " " " " " " 243 00

$ 597 95

Renewals and painting.
Flooring footway to be removed every 5 years.
100,000 feet lumber @ $12.00.....$1,200 00
Labor, nails, etc..... 430 00

1-5 (1 year).....$1,630 00— 326 00
Painting necessary every 3 years.
21.6%. chargeable to footway.
Cost $1,500.00 = 1 year (⅓) $500.00 x 21.6%..... 108 00
Total general ~~earnings~~.....$ 154,351 95
Gross earnings, entire line..... 1,202,273 58
Gross earnings, foot bridge..... 3,458 52 or 288%.— 444 53

$1,476 48

EXPENSES—OPERATING, Etc.

1895-96.

Roadmaster	$1,620 00		
Supt. bridges and buildings	1,242 00		
292 miles track: Bridge part of	$2,862 00—	$ 4 85	
Supervisor track, 100 mile " "	970 00	4 81	
Engineer for draw		486 00	
Oil, waste, lamps, coal, etc		19 26	
		$ 514 92	
Footway proportion 21.6%. of $514.92			$ 111 22
½ salary day toll keeper (watchman), see L. & N. cont.			243 00
½ " night " " " " " "			243 00
			$ 597 22
Renewal and painting.			
Flooring, footway to be renewed every 5 years.			
100,000 feet lumber @ $12.00	$1,200 00		
Labor, nails, etc	430 00		
1-5 (1 year) of	$1,630 00—		326 00
Painting necessary every 3 years.			
21.6%. chargeable to footway.			
Cost, $1,500 00 = 1 year ⅕ $500.00@21.6%			108 00
General supervision, taxes, etc., based on earnings—			
Total general expenses	$ 231,808 27		
Gross earnings, entire line	1,348,538 31		
Gross earnings, foot bridge	4,414 54 or 328%		
328%. of $231,808.27			551 70
			$1,582 92

Table No. 215 on page 160 should be as follows:

GROSS EARNINGS, EXPENSES AND NET EARNINGS OF THE FLORENCE FOOT BRIDGE AT PRESENT, AND PRESCRIBED RATE OF TOLL.

	1894-5.	1895-6.	1896-7.	
			Pegram's	Depo.
Gross earnings	$3,458 52	$4,414 34	$4,500 70	p. 180
Expenses, (see table above)	1,476 48	1,582 92	1,582 92	same as '95-6
	$1,982 04	$2,831 42	$2,917 78	
Interest of value of Toll Bridge, p. 158, t. p. 26,278.62 @ 6%	1,576 71	1,576 71	1,576 71	
Gain	$ 405 33	$1,254 71	$1,341 07	
Earnings at rate of toll proposed—				
	$2,075 11	$2,648 72	$2,700 42	
Add 20% for increased travel	415 02	529 74	540 08	
	$2,490 13	$3,178 46	$3,240 50	
Expenses as shown in former tables	1,476 48	1,582 92	1,582 92	(same as in 95-6)
Gain	$ 1,013 65	$1,595 54	$1,657 58	
	nearly 4% on 26,278.62	6%.	6%.	
Or stated with the item of expenses of general supervision left out:				
Gross earnings	$2,490 13	$3,178 46	$3,240 50	
Expense item of gen'l exp. out	931 95	1,031 22	1,031 22	
Gain	$1,558 18	$2,147 24	$2,209 28	
	or nearly 6% on $26,278.62	8%.	8%.	

There is another most important proposition in this case. Complainants may actually make more money by the prescribed than by the present rate of toll. Not only will the persons who use the toll

bridge now use it oftener, but those who have heretofore suffered the inconvenience of waiting for the trains can afford to use their own conveyances at the reduced rate. Now, in the first place, if the railway is used, the L. & N. operates trains as well as the complainant, and now takes, say, half of the traffic. But complainants get the entire toll from the toll bridge. Again, the railway charge is 10 cents, between Florence and Sheffield, and 16 cents between Florence and Tuscumbia, (Pegram deposition, p. 87), and even less than 10 cents, we presume between Florence and South Florence, the distance being less. Except for foot passengers, who pay 5 cents each on the bridge, and persons on horseback who pay 8 cents, complainants will receive as much or more from persons using buggies, carriages and wagons on the bridge than if they went by rail. Each one-horse vehicle and driver must pay 15 cents—30 cents round trip. The rail rate for the single person would be 10 cents to Sheffield—20 cents for round trip,—16 cents to Tuscumbia—32 cents for round trip. For each two-horse vehicle and driver, 25 cents—50 cents for round trip; and in order to protect the company from imposition, for each additional person in any of these carriages 5 cents—10 cents for round trip. So that, as said above, except for foot passengers, complainant will get more than on the railway. But only 17 foot passengers go over each day (Pegram's deposition, p. 86)—total $1.70 a day, or about $600 a year. The remainder, the largest part nearly, if not quite $4,000 a year, evidently comes from persons who use horses or vehi-

cles. And so, it appears that if people quit the trains, as they will do, and use their vehicles on the bridge, especially when it is considered that the L. & N. gets part of the rail traffic, the receipts of complainant will not be lessened at all, but may be larger. So of the toll bridge rate for stock, sheep, etc. The rate on the toll bridge is higher than complainants' freight rates, which go down by competition every year, while the toll rate has suffered no such reduction.

The deprivation of property contended for by complainant means a future deprivation—that is, after the passage of the act. And if it can be shown that there is gradual increase in business while the operating expenses must necessarily remain the same, then the complainant has no case.

It should not be forgotten that a bridge is a structure which, unlike a steamboat or railroad train, is stationary and remains in its place, and costs comparatively very little to maintain and operate it. A steel bridge like this is not exposed to fire. Being open and heavy it can hardly be blown away. It can be maintained for a great number of years at a trifling expense.

Complainant, in his exigency, alleged as an element of expense that this bridge had frightened two horses and that suits were pending against him. The idea of horses being frightened at a bridge. They might as well run from a house or a mountain.

This case has been argued heretofore as if the principle contended for by the appellees in the Nebraska case was correct, viz: That the interest of

the corporation only was to be considered and that it must be allowed to pay all expenses, including a large and unexplained item of general expenses and also at least 6 per cent. upon the value of its propty. The court in the Nebraska case expressly and positively declined to go that far. It asserted that the rights of the public are not to be ignored and this right of the public was affirmed to be to use defendant's property upon the payment of such tolls as, in view of the nature and value of the services rendered by the company, are reasonable. Well, now, as to the nature and value of these services. The bridge, say the complainant in their tax case, is a railroad bridge with a thoroughfare as an incidental feature. The appellate court in the Fifth circuit calls it a "necessary railroad bridge." The complainant is bound to maintain it for his railway business, and what he gets out of it is just so much added to his gross earnings on the bridge. He is bound to keep his watchmen and servants employed to take toll. He is bound to paint the bridge and keep up the substructure and superstructure except only the floor of the roadway, which only costs $326 per year.

It is alleged in the answer that the high tolls are excessive, extortionate and unjust as compared with the charges for like services in other localities. That they prohibit commercial and social intercourse between the towns of Tuscumbia, Sheffield and South Florence, and the city of Florence, and between the counties of Colbert and Lauderdale, the witness Conner, a man of high character, testifies that this is true (page 127), but it only needs

to set out again the rates of toll over the Florence bridge, viz: That 10¢ is charged for each horse or for each cow or for each person, child as well as adult. That one man and horse must pay 20¢, the round trip 40¢. That one-horse buggy must pay 30¢, round trip 60¢. That a two-horse carriage or buggy must pay one dollar for the round trip, and a two-horse wagon must pay $1.20 for the round trip to show that the present rates are unreasonable.

It is not shown that there are any street cars passing over this bridge, nothing except railway trains which on account of the expenses of running them and the fact that they go at stated intervals long apart makes them absolutely useless for frequent intercourse over the bridge. Pegram, indeed, testifies that the trains run frequently, but Ewing, the general agent of the L. & N. Railroad Company (page 140), testifies that on the L. & N. solid passenger trains run daily, and such is the fact, in reference both to the L. & N. and M. & C. We could suppose a case where the trains on both these roads leave Florence at or about one o'clock daily and return between two and four p. m., there being no other train in the morning and no more in the afternoon, and none at night except one leaving Florence at midnight and returning from Tuscumbia at four o'clock in the morning. That this is the fact as shown by all the printed schedules, does not detract from the force of the suppositious case I have made nor add anything to the convenience of the public in passing over this bridge.

An important principle was decided in the Covington and Cincinnati Turnpike case, 164 U. S., which is directly in point here. In that case the corporation set up the fact that the Cincinnati Southern road and the L. & N. road had built parallel lines with the turnpike and established stations on the turnpike and near to it which took away from the business of the turnpike. Now, suppose, which is not the case, that the trains on the L. & N. and M. & C. roads, instead of running daily, run hourly, and charged only three cents per mile, and accommodated nearly all the people, so that nearly all of them found it convenient to use the railroad trains, would this have justified the complainant in charging those persons who residing on one side of the river and having business on the other are compelled to cross on foot or by horse, or vehicle, in charging them the present high tariff. Because most of the freight from the factories which could go in car load lots was hauled over the railway, would that justify complainant in charging a man who crosses the bridge with a two-horse wagon with a load of melons or a load of corn $1.20 for the round trip when he could only sell the entire wagon load for two or three dollars? If a family of four school children pass daily over the bridge, the trains not running so that they could get to school in time, as is the case, and the station being a mile from the school house, as is also the case, would that justify the complainant in charging thirty-two cents a day for these children to cross his bridge? And is it not clear that if the rate were reduced, more people would use the

bridge? See how close these towns and these peoples are situated together. Note the manufactories on both sides of the river. Note that it is impossible for trains, even suburban trains in the large cities, to run frequently enough to accommodate the interests of people who live just across the river from each other.

It is perfectly clear that the business, passenger and freight has gone to the top of the bridge—to the railway part, but it is insisted that the people who do use this bridge shall be protected from extortionate rates. Pegram expressly declares, page 87, that there has been a decrease in the receipts of the toll bridge, because he says the L. & N. and M. & C. both run trains and charge so little for transportation.

We presume to call the attention of the Court briefly to the difference in the facts in this case and those recently decided by this Court.

In the Nebraska case, 169 U. S., the Court found as a matter of fact that if the prescribed rates were put into effect, which applied to the entire local business of the companies, that nearly all of them would transport this business at an actual loss, and that in one or two cases only, the net receipts would have been inconsiderable, too small to affect the general condition.

In the Covington turnpike case it was admitted that the act, if carried into effect, would not only reduce the receipts below the operating expenses, but would make it impossible for the company to maintain its road in a fit condition for the use of the public.

In the Texas case, Reagan v. Farmers' Loan and Trust Co., the cost of the railroad property was $40,000,000.00. It had $15,000,000.00 of bonds and $10,000,000.00 of stock, and the Court found that the proscribed rates would so diminish the earnings that they would not pay the operating expenses and interest on one-half of the bonded indebtedness. That is, to say property which cost $40,000,000.00, worth at least $25,000,000.00, there would be no return upon anything except upon $7,500,000 of this amount.

Now, in this case, we have earnings which have constantly increased. In 1894, $3,458.52; in 1895, $4,414.54 (see page 160); in 1896, $4,570 (see page 180).

On the railway part, cars in 1894, 10,232; in 1895, 11,471; in 1896, 21,834. See page 159.

In this case if the gross receipts from all parts of the bridge are added together and the gross expenses taken therefrom, even on the statement made by the servants of the company, a handsome return remains. But if the bridge is given credit for the business passing over it according to its real value in comparison to the value of the other portions of the property, then indeed the earnings will not only pay the operating expenses, but pay a profit upon a capitalization that would represent twice the value and cost of the bridge.

There is another phase on this question which ought to be presented. If complainant had shown, as he has failed to do, that there was not any actual return above operating expenses from the bridge, still

it must be considered that this bridge is the way by which this railroad corporation penetrates into the rich and flourishing city and county and territory north of the river and derives traffic therefrom to be carried over many miles of their railway and in this way to add to the gross receipt of the entire line.

Complainant does not introduce his freight agent at Florence to show to this court the monthly receipts of the company at that important station. Inasmuch as he has failed to do so, for that would be an important inquiry, the guess is ventured here by counsel that these receipts are not less than $1,500.00 per month, or $18,000.00 per year. Without the bridge no part of this could be added to the revenue of the company, and it seems to us that this is a portion of the earnings involved in this case and shows at least that complainant has utterly failed to bring into the court such evidence as will enable this court to interfere and to declare this act of the legislature unconstitutional.

This case should be dismissed:

(1.) Because it is a suit against the State of Alabama.

(2.) Because there are no proper or real parties defendant.

(3.) Because it attempts to restrain the discretionary duties of executive officers of the State.

(4.) Because it prays the court to establish and execute a void and illegal contract.

(5.) Because the prescribed rates are just and reasonable.

(6.) Because there is no equity in the bill of complaint.

Respectfully submitted,

WM. J. WOOD,

WILLIAM C. FITTS,

Counsel for Appellants.

No. 130.

Brf. of Humes for

130

Supreme Court U. S.
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Supreme Court of the United States.

WILLIAM C. FITTS, AS ATTORNEY-GENERAL OF THE STATE OF ALABAMA, ET AL.,
APPELLANTS,

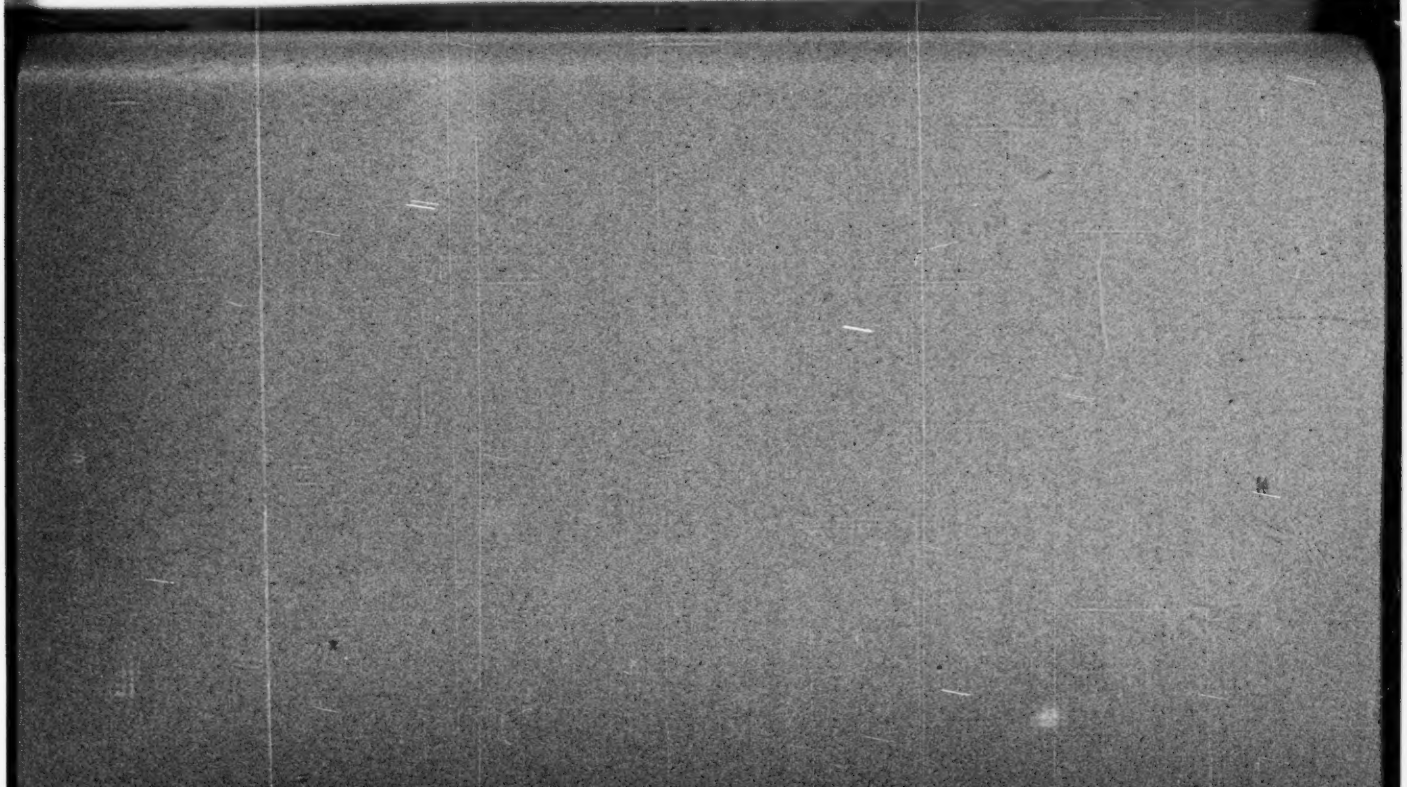
vs.

CHARLES M. McGHEE AND HENRY FINK, AS RECEIVERS OF M. & C. R. R. CO., ET AL.,
APPELLEES.

BRIEF AND ARGUMENT FOR APPELLEES.

MILTON HUMES,
PAUL SPEAKE,
SOLICITORS FOR APPELLEES.

W. G. Dickson, Printer, Huntsville, Ala.



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—o—

STATEMENT OF CASE.

The bill as originally filed by Appellees was against the State of Alabama and its governor and attorney-general (Printed Record, p. 3). It was afterwards amended by making parties defendant, one W. H. Gilliam, and, still later, A. H. Carmichael, as solicitor or prosecuting attorney for the Eleventh Circuit of Alabama, (Pr. Rec., pp. 28, 33, 36). It was later dismissed as to the State and discontinued as to the governor of the State. (Pr. Rec., pp. 40, 180).

The purpose of the bill and its several amendments was to prevent the enforcement by the defendants of a certain Act of the General Assembly of Alabama, as follows:

"An Act to fix the maximum of tolls to be charged by the owners, lessees, or operators of the road bridge crossing the Tennessee River between the Counties of Colbert and Lauderdale, and known as the Florence Bridge, and to fix the penalty for demanding or receiving a higher rate of toll.

"Section 1. Be it enacted by the General Assembly of Alabama, That the maximum rates of toll to be charged by the owners, lessees, or operators of the bridge crossing the Tennessee River, between the counties of Colbert and Lauderdale, and known as the Florence Bridge, shall be as follows:—For each foot passenger $.05; for children under 14 years of age

and all pupils attending school $.02; for each one-horse vehicle and driver $.15; for each two-horse vehicle and driver $.25; for each three-horse vehicle and driver $.30; for each four-horse vehicle and driver $.35; for each additional horse to vehicle $.05; for each additional person in vehicle $.05; for each horse, mule, or animal of like kind with rider $.08; for each horse, mule, or animal of like kind $.05; for each cow, steer, or animal of like kind $.05; for each sheep, hog, goat or animal of like kind $.03.

"Section 2. Be it further enacted, That should the owners, lessees or operaters of said toll-bridge, by themselves or any of their agents demand or receive from any person a higher rate of toll than is prescribed by this act, he or they forfeit to such person twenty dollars for each offense, to be recoverable before any justice of the peace or notary public and *ex officio* justice of the peace of either of the said counties of Colbert or Lauderdale. Approved February 9th, 1895."

It was shown by the bill and amendments that said Gilliam was threatening to institute a suit under the forfeiture clause of said Act; that said Carmichael as solicitor or prosecuting attorney, charged by law with the duty of prosecuting offenders against the criminal laws of the State, was prosecuting in the criminal courts of the State certain cases instituted by indictment against appellees' employees, under a law of the State making it a misdemeanor for an employee of any bridge company or toll company to take, demand or receive any greater charge or toll than was authorized by such company's charter, or to take or demand an unreasonable charge or toll (Pr. Rec. p. 34); that said attorney general and governor were threatening a proceeding to have the charter and franchise of appellees declared forfeited for their failure to charge the tolls prescribed by said Act above copied.

The bill prayed a perpetual injunction against said several defendants and "all persons whomsoever" restraining the enforcement of said Act and the several proceedings threatened or begun in the State Courts and based upon said Act.

The bill and evidence show that appellees are receivers of the Memphis & Charleston Railroad Company, duly appointed by the Court in which the bill was filed, and authorized by the

decree appointing them to take charge and control of the property and assets of the Railroad Company and operate and manage the same under the orders of the Court, and before the institution of this suit they obtained an order from the Court authorizing its institution and prosecution to a final termination. (Pr. Rec., pp. 1, 2). The Railroad Company was chartered under the laws of the State of Tennessee by Act passed February 2, 1846, which is Exhibit BBB to the bill (Pr. Rec., pp. 11–20), and by section 23 of this Tennessee charter said company was authorized to "purchase, have and hold, any bridge or turnpike road over which it may be necessary to carry said railroad, and when the said purchase is made, to hold said bridge or turnpike road on the same terms, and with all the rights which belong to the individual, individuals, or corporation from which said purchase may be made."

By an Act of the Alabama Legislature, approved January 7, 1850, said Railroad Company was incorporated in Alabama, and by this Alabama charter it is provided (Pr. Rec., p. 21,) that "Said company shall have and enjoy all the rights, powers and privileges granted to it by the acts of incorporation" in Tennessee. By section 2 of this same Act said company was required to construct a branch road to Florence.

Sometime during the year 1850 the Railroad Company purchased or acquired a toll-bridge from the Florence Bridge Company, an Alabama corporation chartered in 1832 for the purpose of building, owning and operating such a bridge across the Tennessee River at Florence. (Pr. Rec., p. 10). The bridge thus bought was blown down between 1850 and 1860 (Pr. Rec., pp. 96, 106, 108,) and the bridge as it now stands was soon afterwards erected by the Railroad Company at the place where the old one had been. At the time the Florence Bridge Company was incorporated a ferry was in operation at Florence across the Tennessee River, and had been for some time previous, and by section 7 of said Bridge Company's charter it was enacted "That the rates of toll for crossing on said bridge shall never exceed the present rates of ferriage at said ferry." (Pr. Rec., p. 11).

Only two witnesses testify as to the exact rates in force at the ferry when the Florence Bridge was incorporated in 1832,

(Pr. Rec., pp. 96, 106, 107,) and according to both of these the rates then were higher than the Railroad Company was charging when the act of 1895 was passed. Numerous other witnesses, however, while not remembering the exact rates of ferriage for the different subjects, all agree and the evidence is uncontradicted that the rates charged at the ferry were larger, or, at least, no less than those since charged by the Bridge Company and the Railroad Company. (Pr. Rec., pp. 79, 91, 92, 102, 103, 108, 112).

The following table shows, in column 1, the rates charged by the Railroad Company prior to and at the time of the passage of the Act of February 9, 1895, and, in column 2, the rates prescribed by the act. (Pr. Rec., pp. 4, 6, 89, 90, 94, 97, and 110):—

	I.	II.
Persons on foot, each	$ .10	.05
1-horse vehicle and driver	.30	.15
2-horse vehicle and driver	.50	.25
4-horse vehicle and driver	.75	.35
6-horse vehicle and driver	1.00	.45
Horse and rider	.20	.08
Horse, mule, etc., each	.10	.05
Cattle, each	.10	.05
School children, each	.04	.02

The Florence Bridge, formerly a toll-bridge alone, is now a toll-bridge and railroad bridge combined—the railroad portion being immediately above the toll portion, both supported by the same piers and abutments, or foundation. It is about half a mile in length and has a draw 412 feet long, second to the largest in the United States, operated by a steam engine. It has stone abutments and piers and in superstructure is a first-class steel bridge of the most approved style. (Rec., p. 85).

The Railroad Company paid the Bridge Company $40,000 or $50,000, in stock of the Railroad Company, which, according to the witness, S. D. Weakley, was a very fair exchange, (Pr. Rec., pp. 106, 122). At the time of this sale the piers that the old bridge had stood on were all that remained of the old bridge (Rec., p. 110). The citizens of Florence were the stockholders and owners of the Bridge Company, and agreed with

the Railroad Company to build the five miles of branch road to Tuscumbia and the bridge over the Tennessee River, and when completed to turn the branch road and bridge over to the Railroad Company, and the stockholders of the Bridge Company were to receive stock in lieu of the bridge and the rights and franchises of the Bridge Company, (Pr. Rec., pp. 110–111).

R. B. Pegram, a witness for appellees, testifies that the total valuation of the bridge is about $250,000, and does not think it could be built for that. The total earnings from the toll portion of the bridge for the twelve months ending December 31, 1894, were $3,281.92, and the actual expenses of operating it were $1,817.50, leaving $1,464.42 to pay taxes, insurance and incidentals. "We nearly always have lawsuits on hand. When this suit was brought there were two lawsuits in the Alabama courts, growing out of injuries received on the bridge.

"Assuming that the valuation of the toll-bridge is one-half of the total cost of the bridge, this assumption being based upon the theory or idea that the toll-bridge was built first and the superstructure was only strengthened to carry the railroad trains on the railroad portion of the bridge, the net earnings of the toll-bridge would be less than one per cent. interest on the amount actually invested in the structure, making no allowance for contingent liabilities.

"The act of the legislature which is complained of in this case, a copy of which is made a part of the original bill of complaint, passed at the last session of the General Assembly of Alabama, fixes the rate of toll over this bridge at exactly one-half of the rate of toll which is now charged and which was charged at the time of the passage of the act, by the railroad company. Owing to the limited population on both sides of the river, in my opinion the increased use of the bridge on account of the decreased toll would not be appreciable, and that the effect of the act would be that for operating this part of the bridge the gross earnings would be greatly less than the expense of operating. Assuming that the rate of increase in business would be 20 per cent., the reduction provided by the act would be such that the gross earnings would just about equalize the expense, and the owners of the bridge would be

furnishing free service to the public for the use of it." (Pr. Rec., p. 86).

It is further shown that the receipts from the toll-bridge have been declining all the time for the past five or six years. (Pr. Rec., pp. 87, 91).

A. H. Plant, the Auditor for appellees, shows by his testimony and the statements attached thereto as exhibits, that the appellees have been operating the bridge at an actual loss, taking into consideration its fixed charges and the cost of maintaining and operating it. He states that from the present and past volume of the business of this road in operating this bridge, if the rates of toll established by the act of 1895 were put into effect, there would be considerable loss from operation; the reduction in rates would be 50 per cent., and the travel would not be increased to anything like that amount by the reduction. "From my knowledge of the situation at Florence and the surrounding country I do not think there would be enough business to justify an increase of 50 per cent. in the travel over the Florence Bridge. Taking into consideration the present actual volume of business in the operation of this bridge, the earnings from this foot-way under the rates prescribed by the act of 1895, would not be sufficient to pay for the service and keeping up the bridge * * * * * My opinion as to the real value of the wagon-way part of the bridge would be about $176,000, that is to say, if the bridge were to be rebuilt for a wagon and foot bridge it would cost about $176,000, to replace the same kind of a bridge there for the use of foot passengers, exclusive of the railroad. * * * * *

"The bonded debt on the entire line of the Railroad Company is $5,524,000, or about $20,000 per mile." It is shown by the tabulated statements, which are made exhibits to Plant's deposition, that the net earnings from the toll portion of the bridge at the rate of tolls in force when the act of 1895 was passed, were as follows:—

$814.55 for the year 1893–4,
$1,238.62 for the year 1894–5,
$2,146.31 for the year 1895–6;

and that the rates of interest on the amount of capital invested in this portion of the bridge represented by these net earnings were, respectively, 1.6 per cent., 2.4 per cent., and 4·2 per cent.

This statement also shows that, at the rates prescribed by the act of 1895 the capital invested would not only have not yielded interest, but that there would have been an actual loss of $742, $490, and $60 during the respective years mentioned. (Pr. Rec., p. 160.)

According to the estimate of this witness the value of the fifteen piers remaining of the old bridge, which were used in the construction of the present bridge, was $60,000 (Pr. Rec., p. 151), and this added to the cost of substructure in making the new bridge $33,000, makes the total cost of substructure $93,000. The cost of superstructure for both toll-bridge and railroad-bridge was $166,484.33, (Pr. Rec., p. 163). The witness says: "To construct a safe foot and wagon-way bridge of same material as the present combination bridge, the substructure would have to be equally as strong and as costly as the present work. As an evidence of this fact some of the old piers now used were constructed for the original wagon bridge. It is estimated that only 33 per cent. should be deducted from the superstructure of the present combination bridge to arrive at the true value of the foot and wagon part. However, as a conservative estimate we deduct 50 per cent. of cost of superstructure and have the following valuation:

Substructure	$ 93,000.00	
Superstructure (50 per cent. of $166,484.33)	83,242.16	
Total value of footway	$176,242.16	
Interest on same at 7 per cent. per annum		$12,336.95
Average annual gross earnings foot bridge for past three years at present toll rate		3,662.25
At proposed rate		1,831.12

The evidence in the case further shows that the population of the town of Florence, on the north side of the river, is 6,000 or 7,000, and of Sheffield, on the south side, about 2,500. (Pr. Rec., pp. 116, 117, 128).

The foregoing is a fair statement of the material testimony in the case.

ARGUMENT.

The assignments of error, forty-three in number, really raise but six questions, which will be argued in the order stated, namely:

I. Is the suit brought in the proper forum, or is it within the jurisdiction of the Federal Court?

II. Is a bill of this character the proper method of testing the constitutionality of the Act of 1895?

III. Is it a suit against the State within the prohibition of the eleventh amendment to the Federal Constitution?

IV. Are the appellees the owners of the rights, privileges and franchises of the old Florence Bridge Company by valid purchase or otherwise, and so entitled to maintain the bill?

V. Does the Act of the Alabama Legislature, approved February 9th, 1895, impair the obligation of the contract contained in the charter of the Florence Bridge Company providing that the rates of toll for crossing on said bridge shall never exceed the present rate of ferriage at said ferry?

VI. Does the Act of February 9th, 1895, violate the Federal Constitution by depriving appellees of their property without due process of law, or are the rates prescribed by the act so unreasonable as to have that effect?

I.

The suit is clearly brought in the proper forum, regardless of the amount involved, or the citizenship of the parties.

The appellees are Receivers appointed by the Federal Court for the District in which the bill was filed. The Receivers are officers of the Court, and the property in their hands is in the hands of the Court. They have a right, regardless of the amount involved and regardless of citizenship, to seek instructions and protection from the Court, either by original bill or by petition.

The case of *In Re* Tyler, 149 U. S., 164, is directly in point.

The Court say in that case: "The property in question was in the custody of the Circuit Court, in a cause within its jurisdiction and protected by injunction. The power exercised was the power to protect the property in the custody of the Court from invasion, and in order to sustain the Receiver's application the ordinary grounds of equity interposition were not required to be set forth. Whether inadequacy of remedy at law in respect of the disputed taxes or the requisite jurisdictional amount, or diverse citizenship was shown to exist, was not, and could not be, matter of inquiry. * * * * No rule is better settled than that when a Court has appointed a receiver his possession is the possession of the Court, for the benefit of the parties to the suit and all concerned, and cannot be disturbed without the leave of the Court. * * * * *"

In Re Tyler, 149 U. S., 164, 181.
In Re Swan, 150 U. S., 637.
White vs. Ewing, 159 U. S., 36, 39.
Ex Parte Chamberlain, 55 Fed. Rep., 706.
Ledoix vs. LaBee, 83 Fed. Rep., 761.
Clark vs. McGhee & Fink, 87 Fed. Rep., 791.

II.

A bill of this character is the method best calculated to test the constitutionality of the act and to thus settle litigation and prevent a multiplicity of suits.

It is true, possibly, that the appellees might defend the one hundred crimipal prosecutions instituted in the State courts against their employees, and the numerous suits threatened against them under the forfeiture clause of the act, and the threatened proceeding by the State attorney-general to have their charter vacated, by raising the question of the constitutionality of the act.

But under the decision of this Court they are not required to defend these numerous cases, all involving the same question. A simpler method is provided, and has been approved by this Court.

In the case of Chicago, Milwaukee & St. Paul Railroad Co. vs. Minnesota, 134 U. S., 418, this Court say: "Neither the legislature nor such commission acting under the authority of the legislature can establish arbitrarily and without regard to justice and right a tariff of rates for such transportation, which is so unreasonable as to practically destroy the value of property of persons engaged in the carrying business on the one hand, nor so exorbitant and extravagant as to be in utter disregard of the rights of the public for the use of such transportation on the other.

"In either of these classes of cases there is an ultimate remedy by the parties aggrieved, in the courts, for relief against such oppressive legislation, and especially in the courts of the United States, where the tariff of rates established either by the legislature or by the commission is such as to deprive a party of his property without due process of law. * * * * *

"That the proper, if not the only, mode of judicial relief against the tariff of rates established by the legislature or by its commission is by a bill in chancery asserting its unreasonable character and its conflict with the Constitution of the United States, and asking a decree of court forbidding the corporation from exacting such fare as excessive, or establishing its right to collect the rates as being within the limits of a just compensation for the service rendered.

"That until this is done it is not competent for each individual having dealings with the carrying corporation, or for the corporation with regard to each individual who demands its service, to raise a contest in the courts over the questions which ought to be settled in this general and conclusive method. * * * * *

134 U. S., pp. 459–60.

"This Court has declared in several cases that there is a remedy in the courts for relief against legislation establishing a tariff of rates, which is so unreasonable as to practically destroy the value of the property of companies engaged in the carrying business, and that especially may the courts of the United

States treat such a question as a judicial one, and hold such acts of legislation to be in conflict with the Constitution of the United States, as depriving the companies of their property without due process of law, and as depriving them of the equal protection of the law."

St. L. & S. F. Ry. Co. vs. Gill, 156 U. S., 649, 657.

III.

The suit is not one against the State within the meaning of the Eleventh Amendment to the Federal Constitution.

"Where a suit is brought against defendants who, claming to act as officers of the State, and under the color of an unconstitutional statute commit acts of wrong and injury to the rights and property of the plaintiff acquired under a contract with the State, such suit, whether brought to recover money or property in the hands of such defendants, or for compensation in damages, or, in a proper case where the remedy at law is inadequate, for an injunction to prevent such wrong and injury, or for a mandamus, in a like case, to enforce upon the defendant the performance of a plain, legal duty, purely ministerial—is not, within the meaning of the Eleventh Amendment, an action against the State."

Pennoyer vs. Connaughy, 140 U. S., 1.
Reagan vs. F. L. & T. Co., 154 U. S., 389.
Osborn vs. Bank of the U. S., 9 Wheat, 738.
Davis vs. Gray, 16 Wal., 203.
Tomlinson vs. Branch. 15 Wal., 460.
Litchfield vs. Webster County, 101 U. S., 773.
Allen vs. Baltimore & Ohio Railroad, 114 U. S., 311.
Board of Liquidation vs. McComb, 92 U. S., 531.
Poindexter vs. Greenhow, 114 U. S., 270.
In Re Tyler, 149 U. S., 164.
Smythe vs. Ames, 169 U. S., 466.
Scott vs. Donald, 165 U. S., 58.

It is true in the case at bar the State of Alabama was nominally a defendant when the suit was brought, but, as said by the Court in the Reagan case above cited, "going back of all

matters of form, the only parties pecuniarily affected are the shippers and the carriers, and the only direct pecuniary interest which the State can have arises when it abandons its governmental character and, as an individual, employs the railroad company to carry its property. There is a sense, doubtless, in which it may be said that the State is interested in the question, but only in a governmental sense. It is interested in the well-being of its citizens, in the just and equal enforcement of all its laws; but such governmental interest is not the pecuniary interest which causes it to bear the burden of an adverse judgment. Not a dollar will be taken from the treasury of the State, no pecuniary obligation of it will be enforced, none of its property affected by any decree which may be rendered. It is not nearly so much affected by the decree in this case as it would be by an injunction against officers staying the collection of taxes, and yet a frequent and unquestioned exercise of jurisdiction of courts, State and Federal, is in restraining the collection of taxes, illegal in whole or in part."

Reagan vs. F. L. & T. Co., 154 U. S., 390.
See also 35 Fed. Rep., 870.

This case is similar in some of its features and in the law governing its disposition, to the case of the State of Louisiana vs. Lagarde, 60 Fed. Rep., 186. In that case, proceedings were taken by the State, represented by its attorney-general and commisioner of agriculture, under an act of the State of Louisiana, requiring all manufacturers of and dealers in commercial fertilizers within the State to obtain license, etc., and providing penalties for failure to conform to its provisions. The defendants filed a cross-bill against the State and its said officers to enjoin the prosecution of these proceedings. Judge Pardee held that the complainants in the cross-bill were entitled to relief, because they were engaged in interstate commerce and not amenable to the provisions of said act. In his opinion he lays stress upon the fact that "the bureau of agriculture and their agents are threatening and intending to harass and annoy the complainants with civil and criminal prosecutions under said act until they shall pay the revenue demanded, or be compelled to abandon their business," and recognizes that an

injunction against the board of agriculture in this one suit will prevent this multiplicity of suits by various parties. Judge Pardee further says: "The case, then, is one within the jurisdiction of this Court, and warrants relief according to equity principles and practice. An injunction is the usual relief in such cases, and it is asked for in this case. The respondents say that it cannot be issued, because the suit is one against the State, and the State cannot be enjoined, nor can it be issued against the law officers of the State, to restrain them from instituting criminal proceedings under the said law, nor can it issue against State officers or State boards, because such an injunction would be equivalent to an injunction against the State. The State of Louisiana was a party to the suit under which complainant's bill, as a cross-bill, was originally filed; and when, by consent of parties and an order of court the cross-bill was permitted to stand as an original bill, the State of Louisiana was not dismissed, but remained as, practically, a nominal party.

The objection that the suit is one against the State so far as it has merit, can be eliminated from the case by the formal dismissal of the bill as to the State of Louisiana. The board or bureau of agriculture or any of the individual members thereof, and some other persons who cannot be classed as agents, attorneys, or employees of said board against whom complainants desire relief, should be made parties. Leave will be given to the complainants to amend their bill in these respects."

60 Fed. Rep., 192.

It follows that if this was originally a suit against the State within the constitutional prohibition, the objection was obviated when the bill was amended by striking out the name of the State as a defendent.

The case having been dismissed for want of jurisdiction as to the State, the governor and attorney general are still parties.

"In deciding who are parties to the suit, the Court will not look beyond the record. Making a State officer a party does not make the State a party, although its law may have prompted his action, and it may be the real party in interest."

Davis vs. Gray, 16 Wall., 203.

"An injunction will lie against officers of the State to prevent the execution of laws which violate rights under the Constitution of the United States."

Osborn vs. Bank of U. S., 9 Wheat., 738.
Davis vs. Gray, 16 Wall., 203.
Central Trust Co. vs. Citizens St. Ry. Co., 82 Fed. Rep., 1.
Indianapolis Gas Co. vs. City, 82 Fed. Rep., 245.
Mutual Life Ins. Co, vs. Boyle. 82 Fed. Rep., 705.

"An injunction may be granted against officers of a State to restrain the collection of taxes in violation of a contract with the State."

Allen vs. B. & O. R. R. Co., 114 U. S., 311.
Litchfield vs. Webster Co., 101 U. S., 773.
Tomlinson vs. Branch, 15 Wal., 460.

IV.

The appellees are the owners of the rights, privileges and franchises of the Florence Bridge Company, and as such are entitled to the aid of the Court.

Appellants contend that as the charter of the Florence Bridge Company does not, in terms, confer upon that corporation the power to sell or otherwise dispose of its corporate franchises, the appellees are not entitled to maintain this suit; that the sale to it by the Florence Bridge Company is *ultra vires* and void.

The Tennessee charter of the Memphis & Charleston Railroad Company expressly authorizes it to "purchase, have and hold *any bridge* over which it may be necessary to carry said road, and when said purchase is made, to hold said bridge on the same terms and *with all the rights* which belong to the individuals or *corporation* from which said purchase may be made."

This provision of the Tennessee charter enures to the benefit of the Railroad Company as incorporated in Alabama, by

reason of that provision of the Alabama charter which declares: "Said company shall have and enjoy all the rights, powers and privileges granted to them by the acts of incorporation above mentioned," (that is, of Tennessee,) "and shall be subject to all the liabilities and restrictions imposed by the same." The Supreme Court of Alabama, construing this section of the Alabama charter, has said: "The purpose was to confer powers, rights and privileges co-extensive with those granted by the Tennessee act of incorporation, and the language employed is comprehensive enough to include, by necessary construction, each and every right, power and privilege granted thereby."

Johnson vs. The State, 88 Ala, 176, 180.

We submit that this provision, not only gives the Railroad Company the power to *buy*, but gives to the Bridge Company the power *to sell.*

There can be no purchase without a sale, no purchaser without a seller.

The Railroad Company is to buy "any bridge", and acquire thereby the rights of "any corporation" therein. The State legislature must be presumed to have known what corporations it had created, and that among them was the Florence Bridge Company. By the Alabama charter, moreover, the Railroad Company was *required* to build a branch road to Florence, in case the road should be built to Tuscumbia. The legislature knew that in order to build the road to Florence from Tuscumbia the river would have to be crossed, and that for this purpose a bridge would be necessayy. It must therefore be held to have had in view the possible purchase of this identical bridge by the Railroad Company and its consequent sale by the Bridge Company.

"The charter of a railroad company authorized it to purchase the franchise and property of another railroad company. HELD, to be an implied authority to the latter company to sell, though there was no provision in its charter giving that power."

N. Y. & N. E. R. R. Co., vs. N. Y., N. H. & H. R. R. Co., 52 Conn., 274; S. C., 25 Am. & Eng., R. R. Cases, 215.

"Where power is given by statute to one corporation to *consolidate* with *any* other, whatever other corporation it selects for a union and finds willing to join it, has power to unite with it, although such other corporation is not *named* in the statute."

1 Thompson on Corp., p. 214, Sec. 315.
2 Cook on Stock & Stockholders & Corp. Law, p. 1503, Sec. 894.
2 Morawetz on Corp., 898, Sec. 941.
Prospect Park vs. Coney Island R. R., 67 N. Y., 371, 377.

"The authority given to any railroad company to buy necessarily implies authority to other companies to sell, inasmuch as there could be no purchase without a corresponding sale."

City, etc., vs. K. & O. R. R. Co., 22 Fed. Rep., 758. 763.

But it is immaterial whether the purchase was *ultra vires* or not. The Railroad Company has been operating the bridge for nearly fifty years, without let or hindrance, under claim of ownership, and during all that time their ownership of it has not been questioned. They are conclusively presumed to have the title thereto, from this long lapse of time, under the doctrine of prescription.

19 Am. & Eng. Enc. of Law, pp., 7, 29.

Moreover, if the sale to the railroad company was *ultra vires* it is not for these defendants to make the objection. It is an objection that can be made only by the stockholders and creditors of the bridge company.

27 Am. & Eng. Enc. of Law, pp. 396, 402.

In addition to all this, the Act of February 9, 1895, is by its terms directed against the "operators" of the Florence Bridge as well as against its "owners", and appellees, therefore, have a right to complain as "operators", if the act prescribes unreasonable rates, in view of the amount of money spent by appellees upon the bridge and in its operation.

V.

The Act of February 9, 1895, impairs the obligation of the contract embraced in the charter of the Florence Bridge Company, whereby that company and its successors are granted the right to fix rates within a certain limit, that is not to exceed "the present (1832) rates of ferriage at said ferry".

The evidence is without conflict that the rates established by appellees and their predecessors and those in force when the act of 1895 was passed, have never exceeded the old ferry rates.

In Stone vs. Yazoo & M. V. R'y Co., 62 Miss., the Court say:

"Fixing rates in a charter is a specification of what is reasonable—an exclusion of tacit or implied conditions on the subject. It is an essential part of the contract of incorporation, the most important condition of its existence, the inducing cause of its acceptance.

"That it was the legfslative intent to vest in the appellee the unrestricted right to fix rates within the limits prescribed by the charter is clear; that this was a valid contract by the State, obligatory and inviolable by it we regard as settled authoritatively by Federal and State decisions too numerous for citation.

"If anything is or ever can be settled in American constitutional law, the sanctity and inviolability of a contract between a State and individuals in the shape of a charter for a business enterprise, accepted and acted on by the corporators on the faith of its terms and provisions, must be so regarded.

"The appellee has the unquestionable right from time to time, by its board of directors, to fix the rates at which it will transport over its railroad, provided those rates shall not exceed the maximum prescribed by the charter. That is the contract. These terms were expressly made. On the faith of them capital was invested and the enterprise set on foot. It is not allowable now for one of the contracting parties to interfere with the exercise by the other of its plainly granted rights. They are secured beyond the reach of legislation and cannot be impaired. The State cannot, by an act of its legislature, abdicate the right to govern artificial as well as natural persons, but

it may create corporations, and where they are a part of the machinery of government, the franchise cannot be resumed by the legislature or its benefits be essentionally impaired without the consent of the grantee.

"To hold otherwise would be revolutionary and disturb the foundatiops of society as molded by the judicial utterances of half a century of constitutional government in America.

"While the rates at which appellee will transport over its roads, not exceeding what is stipulated for in the charter, is for the determination of the appellee and not subject to the control of the State, within the charter limits, it is indisputable that the State may create a commission or board by any name to see that the creature of the State keeps within its charter limits and violates none of its obligations as a common carrier. * * * * * *

"In view of what is written, it must be held that the railroad commission cannot interfere with the rates fixed by the board of directors of the appellee from time to time for transporting persons and property over its railroad, if those rates are within the limits prescribed by the charter, and that the commission can not adopt any rule or regulation as to rates violative of the clearly expressed or necessarily implied charter rights of the company."

Stone vs. Yazoo & M. V. R. R. Co., 62 Miss., pp. 642, 643–44.

In the case of Chicago, etc., R. R. Co., vs. Iowa, in which was involved the constitutionality of an act establishing maximum rates of freight, the railroad company which filed the bill contended that the act was unconstitutional as violating the contract rights of its charter. The Supreme Court held that it was not unconstitutional on this ground, *because its charter did not fix the limit it was to charge, but* Waite, C. J., (with whom concurred Miller, J.,) speaking for the Court, says: "It was within the power of the company to call upon the legislature to *fix permanently this limit* and *make it a part of the charter;* and, if it was refused, to abstain from building the road and establishing the

contemplated business. *If that had been done, the charter might have presented a contract against future legislative interference.*"

Chicago, etc., R. R. Co., vs. Iowa, 94 U. S., 162.

We refer the Court also in this connection to—

Railroad Commission cases, 116 U. S., 307.

In that case the Court construe an act to be constitutional as not violating the obligation of a contract, because, as the Court say on page 330, "there is no rate specified nor any limit set" in the charter, and further, "this is not in conflict with the judgment of the Supreme Court of Mississippi in Railroad Commission vs. Yazoo & Mississippi Railroad Company, in which it was decided that the power had been surrendered in favor of that company because in that charter a maximum of rates was fixed. * * * * * *

And in the last decision of the Supreme Court on this question above referred to, the court, without any dissenting voice, say: "If the charter had in terms granted to the corporation power to charge and collect a definite sum per mile for the transportation of persons and property, it would not be doubted that that express stipulation formed a part of the obligation of the State which it could not repudiate. * * * * *

It is at least a question which arises as to the extent to which that contract goes, and one in which the corporation has a right to invoke the judgment of the courts; and if the corporation, a citizen of the State, has the right to maintain a suit for the determination of that question, clearly a citizen of another State, who has, under authority of the laws of the State of Texas, become pecuniarily interested in, equitably indeed the beneficial owner of, the property of the corporation, may invoke the judgment of the Federal Courts as to whether the contract rights created by the charter, and of which it is thus the benficial owner, are violated by subsequent acts of the State in limitation of the right to collect tolls. Our conclusion from these considerations is that the objection to the jurisdiction of the Circuit Court is not tenable, and this, whether we rest upon the provisions of the statute or upon the general

jurisdiction of the court existing by virtue of the statutes of Congress, under the sanction of the Constitution of the United States."

Reagan vs. F. L. & T. Co., 154 U. S., p. 393.

VI.

Tha Act of February 9, 1895, is in violation of the Federal Constitution, in that it deprives appellees of their property without due process of law, and the enforcement of the rates prescribed by the act would be a virtual confiscation of appellees' property.

This was the ground upon which the lower court based its final decree (Pr. Rec., p. 180–1).

The statute establishes unreasonable rates without allowing appellees a right to be heard, and deprives appellees of their property without making compensation.

Justice Miller, speaking for this Court in a case before quoted, says: "Neither the legislature nor a commission acting under its authority can establish, arbitrarily and without regard to justice and right, a tariff of rates for such transportation which is so unreasonable as to practically destroy the value of property of persons engaged in the carrying business on the one hand, nor so exorbitant and extravagant as to be in utter disregard of the rights of the public for the use of such transportation on the other."

C. W. & St. P. Ry. Co. vs. Minnesota 134 U. S., 418–459.

In another case this Court said: "We do hold that a general averment in a bill that a tariff as established is unjust and unreasonable, is supported by the admitted facts that the road cost far more than the amount of the stock and bonds outstanding; that such stock and bonds represent money invested in its construction; that there has been no waste or mismanagement in the construction or operation; that supplies and labor have been purchased at the lowest possible price consistent with the successful operation of the road; *that the rates voluntarily fixed by the company have been for ten years steadily decreasing until the*

aggregate decrease has been more than fifty per cent.; that under the rates thus voluntarily established the stock, which represents two-fifths of the value, has never received anything in the way of dividends, and that for the last three years the earnings above operating expenses have been insufficient to pay the interest on the bonded debt; and that the proposed tariff, as enforced, will so diminish the earnings that they will not be able to pay one-half the interest on the bonded debt above the operating expenses; and that such an averment so supported will, in the absence of any satisfactory showing to the contrary, sustain a finding that the proposed tariff is unjust and unreasonable, and a decree reversing it being put in force."

Reagan vs. F. L. & T. Co., 154 U. S., 398.

In a third case the Court, speaking of the power of the legislature to regulate rates, adds: "From what has thus been said, it is not to be inferred that this power of limitation or regulation is itself without limit. This power to regulate is not a power to destroy, and limitation is not the equivalent of confiscation. Under pretence of regulating fares and freights, the State cannot require a railroad corporation to carry persons or property without reward; neither can it do that which in law amounts to a taking of private property for public use without just compensation, or without due process of law."

Stone vs. F. L. & T. Co., 116 U. S., pp. 330–31.

That the rates of toll prescribed by the act of 1895 are unreasonable and in their nature and effect confiscatory, is settled conclusively by the recent similar cases of—

C. & L. Turnpike Road Co. vs. Sanford, 164 U. S., 578.
Smyth vs. Ames, 169 U. S., 466.

In the former it is held that a statute reducing the tolls that may be charged by a turnpike company and requiring it to conform to a tariff of rates that is unjust and unreasonable, which prevents it, out of its receipts, from keeping its road in proper condition for public use or from earning any dividends whatever for stockholders, is unconstitutional as a deprivation of

property without due process of law. This decision was based upon facts no stronger than those in the case at bar, as shown by the following portion of the opinion:

"A statute which by its necessary operation compels a turnpike company, when charging only such tolls as are just to the public, to submit to such further reduction of rates as will prevent it from keeping its road in proper repair and from earning any dividends whatever for stockholders, is as obnoxious to the Constitution of the United States as would be a similar statute relating to the business of a railroad corporation having authority, under its charter, to collect and receive tolls for passengers and freight.

"The answer disclosed what had been the average annual receipts of the company under the act of 1865 for a number of years immediately preceding the passage of the act of 1890, and what during that period had been the average annual expenses; alleged that the receipts for the several preceding years had not admitted of dividends greater than 4 per cent. on the par value of the company's stock; that the act of 1890 reduced the tolls 50 per cent. below those allowed by the act of 1865; and that such reduction would so diminish the income of the company that it could not maintain its road, meet its ordinary expenses, and earn any dividend whatever for stockholders. These allegations were sufficiently full as to the facts necessary to be pleaded, and fairly raised for judicial determination the question,—assuming the facts stated to be true,—whether the act of 1890 was in derogation of the company's constitutional rights. It made a *prima facie* case of the invalidity of that statute."

The other case cited above—and last decision on the subject—the Nebraska Rate case—decides that:—"A State enactment or regulations made under the authority of a State enactment, establishing rates for the transportation of persons or property by railroad that will not admit of the carrier earning such compensation as under all the circumstances is just to it and to the public, would deprive such carrier of its property without due process of law, and deny to it the equal protection of the laws, and would therefore be repugnant to the 14th amendment of the Constitution of the United States."

In arriving at a determination as to whether or not certain rates are reasonable this Court has laid down the following rules as to the matters to be considered:—"The first and most important contention of the plaintiff is that, if the statute had been in force during any one of the three years preceding its passage, the defendant companies would have been compelled to use their property for the public substantially without reward or without the just compensation to which it was entitled. We think this mode of calcuation for ascertaining the probable effect of the Nebraska statute upon the railroad companies in question is one that may be properly used.

"The basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public, and, in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimatiug the value of the property. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience."

Smith vs. Ames, 169 U. S., 466.

Let us apply the rules thus laid down to the facts in the case at bar.

R. B. Pegram and A. H. Plant both show that if the bridge was operated under the schedule of rates prescribed by the act it would amount to furnishing a free bridge to the public, and that indeed the bridge would be operated at an actual loss to appellees. (Pr. Rec., pp. 86, 149).

Under the rates adopted by appellees themselves—and they are double those prescribed by the act—the bridge has been operated at a loss ever since the receivers were appointed in

June, 1892 (Pr. Rec., p. 149, 156). During that time the receipts from the bridge have been gradually decreasing (Pr. Rec., pp. 87, 91).

The value of the entire bridge is estimated at about $259,000, and of this $176,000 is estimated as the value of the foot-way portion or toll portion, taking into consideration its original cost, the value of permanent improvements, the character of the structure, and the present as compared with the original cost of construction (Pr. Rec., pp. 162, 163, 150, 85, 86, 87 and 166). It is shown by the statement on page 160, Printed Record, that the gross earnings, expenses and net earnings on the toll portion of the bridge at the rates in force when the act of 1895 was passed and as compared with the rates prescribed by that act are as follows:

AT PRESENT RATE.

For the year	1893–4.	1894–5.	1895–6.
Gross earnings	$3,113.71	$3,458.52	$4,414,54
Expenses	2,299.16	2,219.90	2,268.23
Net earnings	$ 814.55	$1,238.62	$2,146.31

AT RATES PRESCRIBED BY THE ACT.

For the year	1893–4.	1894–5.	1895–6.
Gross earnings	$1,556.86	$1,729.26	$2,207.27
Expenses	2,299.16	2,219:90	2,268.23
Net earnings	$ 742.30	$ 490.64	$ 60.96

It thus appears that the earnings at the present rates, estimated upon the basis of $51,083.34 the assumed arbitrary value placed upon the foot-way portion of the bridge under the contract between the L. & N. Railroad and the M. & C. Railroad, were only 1.6 per cent., 2.4 per cent. and 4.2 per cent. for said three years respectively, or an average of only 2.7 per cent. per year.

If incidental expenses, such as lawsuits, insurance, etc., were included the rate per cent. earned at present rates would be even less (Pr. Rec., p. 86).

The same net earnings at the present rates, estimated upon the actual cost and value of the toll portion of the bridge ($176,242.33), would equal an annual per centage upon the amount invested of only (about) one-half of 1 per cent., two thirds of 1 per cent. and 1¼ per cent. for said three years respectively, or an average of only twenty-nine thirty-sixths of 1 per cent. per year, with which to pay insurance, interest on bonded debt, and incidentals.

When we remember that the bonded debt (Pr. Rec., p. 151) is $5,524,000.00 or about $20,000 per mile, it becomes still more clear why the bridge has been run at a loss since 1892, at the rates of toll adopted by appellees themselves. The actual loss under the rates prescribed by the act will be even still greater as shown by the foregoing statement.

The rates of toll the appellees were charging on the bridge are no higher than those charged on similar bridges, even where the amount of travel is much greater than on this bridge. It is permissible and proper to make this comparison, for as this Court has said, quoting from the Court of Appeals of Kentucky: "A turnpike road leading into and connected with a populous city could afford to charge less toll by reason of the immense travel upon it than turnpikes in thinly settled portions of the county or State."

> *Covington & L. Turnpike Co., vs. Sandford, 164, U. S., p. 578–598.*

The witness R. B. Pegram testifies (Pr. Rec., p. 86) "The toll fixed by the act for foot passengers is five cents. This is the same as the rate on the St. Louis bridge crossing the Mississippi River at St. Louis, Mo. The average number passing over this last named bridge daily is about 15,000, and the average number over this bridge at Florence about 17, and the proportion of travel as to vehicles, etc., is about the same. The tolls of the Florence bridge are not largely in excess of those charged by the St. Louis bridge. The rate, for instance, over the St. Louis bridge for a two-horse wagon-load, according to my recollection, is 50c; over the Florence bridge it is 60c."

According to the evidence in this case, the population of Florence, on one side of the river, is only between 6,000 and 7,000, and that of Sheffield, on the other side, but three miles from Florence and two miles from the bridge, is only about 2,500.

According to the census of 1890 the population of St. Louis was 452,000, and that of East St. Louis, Ill., at the other end of the St. Louis bridge, was 15,000.

When we recall that the evidence of Pegram and Plant, and the statements attached to the latter's evidence, are practically uncontradicted, we respectfully submit that no conclusion can be reached from the record in this case other than that the rates prescribed by the act of 1895, if enforced, would deprive appellees of their property and property rights without due process of law.

MILTON HUMES,
PAUL SPEAKE,
COUNSEL FOR APPELLEES.

FITTS *v.* McGHEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

No. 180. Argued October 26, 1898. — Decided January 3, 1899.

A suit brought by the receivers of a railroad against the Attorney General of the State of Alabama and the Solicitor of the Eleventh Judicial Circuit of that State, to restrain them, as officers of the State, from taking steps to enforce against the complainants the provisions of a law of that State reducing the tolls which had been exacted of the public under a prior law for crossing on a bridge of the railroad over a river, is a suit against the State, and this court accordingly reverses the judgment of the court below, adjudging that the latter law was unconstitutional and void, and that the defendants should not institute or prosecute any indictment or criminal proceeding against any one for violating the provisions of that act, and directed the court below to dissolve its injunction restraining the institution or prosecution of indictments or other criminal proceedings so instituted in the state courts, and to dismiss the suit so brought by the receivers against the Attorney General of Alabama and the Solicitor of the Eleventh Judicial Circuit of that State.

An act of the General Assembly of Alabama, approved February 9, 1895, prescribed certain maximum rates of toll to be charged on the bridge across the Tennessee River between the counties of Colbert and Lauderdale in that State, and known as the Florence bridge. It also declared that should the owners, lessees or operators of the bridge, by themselves or agents, demand or receive from any person a higher rate of toll than was prescribed, he or they should forfeit to such person twenty dollars for each offence, to be recoverable before any justice of the peace or notary public and *ex officio* justice of the peace of either of the counties named.

When that act was passed the cases of *Samuel Thomas* v. *Memphis and Charleston Railroad Company* and *Central Trust Company of New York* v. *Memphis and Charleston Railroad Company* were pending in the court below; and on the 14th day of February, 1895, Charles M. McGhee and Henry Fink, receivers of the Memphis and Charleston Railroad in those causes — having first obtained leave to do so —

filed a bill in the name of themselves and the railroad company against "the State of Alabama, William C. Oates, as Governor of the State of Alabama, and William C. Fitts, as Attorney General of the State of Alabama."

After setting out their appointment as receivers, the order of the court below authorizing the institution of the present suit, the official character of the several defendants, the ownership by the Memphis and Charleston Railroad Company of the bridge in question, the above act of February 9, 1895, the manner in which that company acquired the right to construct and own the Florence bridge, the charters of the railroad company granted by Tennessee and Alabama, the purchase in 1850 of the bridge by the railroad company under the charter granted by Alabama, and its management of the bridge under the charter of the Florence Bridge Company, the plaintiffs averred that the act incorporating the Bridge Company was a contract between the State and the owners of the bridge; that the rights acquired by that company under its charter passed to the Memphis and Charleston Railroad Company; that the rates of toll fixed by the act were arbitrary, unreasonable and amounted virtually to the confiscation of the plaintiffs' property, and that the act was in violation of the Constitution of the United States in that such a legislative enactment deprived the owners of the bridge of their property without due process of law, and denied to them the equal protection of the laws.

It was further alleged that the clause in the act imposing a penalty for demanding or receiving higher rates of toll than those prescribed was intended and had the effect to deter the plaintiffs from questioning by legal proceedings the validity of such legislation.

After stating that they were remediless except by a bill in equity, the plaintiffs prayed that "process of subpœna be issued to and served upon the State of Alabama, the said William C. Oates, as Governor of the State of Alabama, and William C. Fitts, as Attorney General of the State of Alabama," requiring them, "in behalf of the State," to answer the bill, and that an injunction be granted prohibiting and restrain-

ing said William C. Oates, as Governor of the State of Alabama, and said William C. Fitts, as Attorney General of the State of Alabama, and all persons whomsoever, from instituting any proceeding against the complainants or either of them under the forfeiture clause above set out in the second section of said act of the General Assembly of Alabama.

Subpœnas to appear, answer or demur to the bill were issued and served upon defendant Oates, as Governor, and upon defendant Fitts, as Attorney General of the State. A subpœna was also issued against the State, and served upon the defendant Oates, as Governor.

A temporary injunction was issued, restraining and enjoining William C. Oates, as Governor of Alabama, and William C. Fitts, as Attorney General of the State, and "all persons whomsoever, from instituting or prosecuting any proceedings" against the plaintiffs, or either of them, under the forfeiture clause contained in the above act of February 9, 1895.

The defendants appeared specially for the purpose of moving, and did move, that the bill be dismissed upon the ground that the suit was one against the State, and prohibited by the Constitution of the United States.

The plaintiffs, by leave of the court, amended their bill by adding thereto paragraphs to the effect that frequent and numerous demands had been made by persons on foot, on horseback and in vehicles of the toll-gate keeper at the bridge to pass them over at the rate of toll fixed by the act, and upon the refusal of the toll-gate keeper to permit them to pass by the payment of the rates so fixed, and his requiring them to pay the rates of toll fixed by the plaintiffs, they had paid the tolls so required of them under protest, and had threatened to institute suit or suits against the plaintiffs under the penalty clause of the act, and had also threatened to procure proceedings to be instituted in the courts by the Governor and Attorney General in the name of the State, by a mandamus or otherwise to compel the plaintiffs to pass people over the bridge at the rates fixed by the act; that those persons had also threatened to procure proceedings to be instituted in the name of the State for a forfeiture of the franchise of the Mem-

phis and Charleston Railroad Company in and to the bridge property because of the failure and refusal to observe and obey the requirements of the act in reference to the rates of toll to be charged over the bridge; and that the persons so protesting and threatening suits were too numerous to be made parties to that suit. Special reference was made to William H. Gilliam, a resident citizen of Colbert County, Alabama, as one of the parties or persons who had made threats of such suits and proceedings.

The bill was amended by making Gilliam a party defendant, and by adding before the prayer for general relief, a prayer "that an injunction be granted prohibiting and restraining said William C. Oates, as Governor of the State of Alabama, and said William C. Fitts, as Attorney General of the State of Alabama, and said William H. Gilliam and all persons whomsoever, from instituting or procuring the institution of any proceedings against these complainants, or either of them, by mandamus or otherwise, to compel the observance and obedience of said act in reference to the rate of tolls fixed thereby over the said bridge, and also from instituting or procuring to be instituted any proceeding against these complainants, or either of them, for the forfeiture of the franchise of the Memphis and Charleston Railroad Company in and to the said bridge on account of the refusal to charge the rates of toll over it fixed by said act."

Subsequently, an order was made, enjoining and restraining William C. Fitts, as Attorney General of the State of Alabama, and William H. Gilliam, and all persons whomsoever, until the further order of the court, from instituting or procuring the institution of any proceeding against the plaintiffs or either of them, by mandamus or otherwise, to compel the observance and obedience of the act in reference to the rate of tolls fixed thereby over the Florence bridge, and from instituting or procuring to be instituted any proceedings against the plaintiffs or either of them for the forfeiture of the franchise of the Memphis and Charleston Railroad Company in and to the bridge on account of the refusal to charge the rates of toll over it fixed by the act.

At a later date in the progress of the cause the plaintiffs, by leave of the court, inserted the following averments in the bill:

"Complainants would further show unto your honors that at the fall term 1895 of the Circuit Court of Lauderdale County, Alabama, a large number of indictments — some one hundred in number — were found by the grand jury of said court against Thomas Clem and G. W. Brabson, who are the toll-gate keepers at the public crossing of said bridge for complainants, the receivers of the Memphis and Charleston Railroad Company. These indictments were found under section 4151 of the Criminal Code of Alabama, which reads as follows: '4151 (4401). Any person who, being or acting as an officer, agent, servant or employé of any turnpike company, macadamized road company or other incorporated road or bridge company, takes, receives or demands any greater charge or toll for travel or passage over such road or bridge than is authorized by the charter of such company, or, if the charter does not specify the amount of toll to be charged or taken, fixes, prescribes, takes, receives or demands any unreasonable charge or toll, to be determined by the jury, must, on conviction, be fined not more than one hundred dollars.' Complainants allege and show unto your honors that these indictments were improperly and wrongfully found against said toll-gate keepers, and they are being improperly prosecuted thereby, because the rate of toll which they have charged is only the rate which has heretofore been fixed by the receivers, which was fixed by them before the passage of said unconstitutional act of the General Assembly of Alabama reducing the tolls, and is the same rate of tolls which have been charged for more than twenty years by the Memphis and Charleston Railroad Company for the use by the public of said bridge, and the tolls so charged by said toll-gate keepers were authorized by this court, and said indictments have been found and are being prosecuted in violation of the authority of this court and of its orders in the premises, and in violation of the constitutional rights and privileges under the Constitution of the United States, secured

to the owners of said bridge in the charging of tolls before crossing it. A. H. Carmichael is the Solicitor for said judicial circuit, and as such is engaged in the prosecution of said indictments."

The plaintiffs asked that Carmichael, as such solicitor, be made a party defendant; that all needful process issue against him; and that a restraining order be issued enjoining him and all other persons from the prosecution of said indictments.

By a supplemental bill it was averred that writs of arrest had been issued upon the above indictments against Clem and Brabson, and placed in the hands of the sheriff, who in execution thereof had arrested or would arrest the said employés of the receivers. It was further alleged that these criminal proceedings were in contempt of the order of the court below appointing the receivers, as well as in violation of the injunction which the court had issued, and which still remained in force, "enjoining the said Governor, Attorney General and all persons whomsoever from instituting any suits or proceedings" under the above act of the State.

After referring to the indictments and the purpose on the part of the state officers to proceed under them, the plaintiffs prayed that the act of February 9, 1895, be declared repugnant to the Constitution of the United States and invalid, inoperative, null and void, and that an injunction be granted "prohibiting and restraining William C. Oates, as Governor of the State of Alabama; William C. Fitts, as Attorney General of the State of Alabama, W. H. Gilliam and A. H. Carmichael, Solicitor as aforesaid, and all other persons whomsoever, from instituting any proceeding against these complainants or either of them, their servants or agents, under the forfeiture clause set out in said second section of said act of the General Assembly of Alabama;" that said officers "and all persons whomsoever be restrained and enjoined from instituting or procuring the institution of any proceeding against these complainants or either of them, their agents, servants or employés, by a mandamus or otherwise, to compel the observance and obedience to said act in reference to the rate of tolls fixed thereby over said bridge, and also from instituting

or procuring to be instituted any proceeding against these complainants or either of them for the forfeiture of the franchise of the Memphis and Charleston Railroad Company in and to said bridge on account of the refusal to charge the rates of toll over it fixed by the said act;" and that "the said defendants and said Carmichael, Solicitor as aforesaid, and all persons whomsoever, be restrained and enjoined from prosecuting said indictments against the said servants, agents and employés of the complainants, or from interfering in any way, under and by virtue of the color of said unconstitutional act, with the rights, privileges, and franchises and property of the complainants, their servants or agents, with regard to said bridge."

At this stage of the proceedings the plaintiffs dismissed the cause so far as the State was made a party defendant, and amended the bill by striking out its name as a defendant, as well as the words "in behalf of the State." The cause was then heard upon a motion by the Governor and Attorney General to dismiss the bill upon the ground that the suit was one against the State in violation of the Constitution of the United States.

Upon the filing of the last amendment to the original bill, it was ordered by the court that A. H. Carmichael, as Solicitor for the Eleventh Judicial Circuit of Alabama, be enjoined and restrained temporarily, and until the further orders of the court, "from instituting or prosecuting as such Solicitor any indictments or criminal proceedings against any one for a violation of the alleged unconstitutional act of the Legislature of Alabama described in the bill."

The next step in the proceedings was the suing out of writs of *habeas corpus* by Clem and Brabson, who were under arrest on process issued on the above indictments. Each of the petitioners was released upon his own recognizance in the sum of $150, conditioned that he would appear in court from day to day until discharged.

Gilliam filed an answer, insisting upon the validity of the act of the legislature which had been assailed by the bill as unconstitutional.

Statement of the Case.

A decree *pro confesso* was taken against the Governor and Attorney General of the State, as well as Carmichael as Solicitor aforesaid, all in their respective official capacities. But that decree was set aside, and the cause was heard upon demurrers by the various defendants. The demurrers were overruled, and answers were filed by the Governor and Attorney General of the State and by the Solicitor of the Eleventh Judicial Circuit. There were also motions to dissolve the injunction granted in the case, upon the ground that there was no equity in the bill, and that the injunctions were in violation of the Constitution and statutes of the United States.

The final decree in the case was as follows: "This cause coming on to be heard, the submission at the former term of the court is hereby set aside, and, it being made to appear to the court that the defendant William C. Oates has ceased to be the Governor of the State of Alabama, it is thereupon ordered that the said cause be discontinued as to him, and the cause is now resubmitted at this term of the court for final decree upon the pleadings and testimony offered by the parties, and upon due consideration thereof it is considered by the court that the complainants are entitled to relief. It is thereupon ordered, adjudged and decreed that the act of the Legislature of the State of Alabama referred to and set up in the original bill of complaint in the cause, which act was approved February 9, 1895, and entitled 'An act to fix the maximum of tolls to be charged by the owners, lessees or operators of the road bridge across the Tennessee River, between the counties of Colbert and Lauderdale, and known as the Florence bridge, and to fix the penalty for demanding or receiving a higher rate of tolls,' is violative of the constitutional rights of the owners of said bridge and of the complainants as their representatives, in that it fixes a rate of tolls for said bridge which are not fairly and reasonably compensatory, and it is therefore hereby declared to be invalid and inoperative, and the injunctions heretofore granted in the cause are hereby made perpetual. It is further ordered, adjudged and decreed that the defendants pay the costs of this proceeding, for which let execution issue."

Opinion of the Court.

Mr. William J. Wood for appellants. *Mr. William C. Fitts*, Attorney General of the State of Alabama, was with him on the brief.

Mr. Milton Humes for appellees. *Mr. Paul Speake* was with him on the brief.

Mr. Justice Harlan, after stating the facts as above reported, delivered the opinion of the court.

The principal question before us is whether this suit is one of which a Circuit Court of the United States may take cognizance consistently with the Constitution of the United States.

From the history given of the proceedings below it appears that the Circuit Court adjudged —

That the legislative enactment of February 9, 1895, was unconstitutional and void in that it did not permit the owners of the Florence bridge, and the plaintiffs as their representatives, to charge rates of toll that were fairly and reasonably compensatory; and,

That the defendants Fitts and Carmichael, holding respectively the offices of Attorney General of Alabama and Solicitor of the Eleventh Judicial Circuit of the State, should not institute or prosecute any indictment or criminal proceeding against any one for violating the provisions of that act.

Is this a suit against the State of Alabama? It is true that the Eleventh Amendment of the Constitution of the United States does not in terms declare that the judicial power of the United States shall not extend to suits against a State by citizens of such State. But it has been adjudged by this court upon full consideration that a suit against a State by one of its own citizens, the State not having consented to be sued, was unknown to and forbidden by the law, as much so as suits against a State by citizens of another State of the Union, or by citizens or subjects of foreign States. *Hans* v. *Louisiana*, 134 U. S. 1, 10, 15; *North Carolina* v. *Temple*, 134 U. S. 22. It is therefore an immaterial circumstance in

the present case that the plaintiffs do not appear to be citizens of another State than Alabama, and may be citizens of that State.

What is and what is not a suit against a State has so frequently been the subject of consideration by this court that nothing of importance remains to be suggested on either side of that question. It is only necessary to ascertain, in each case as it arises, whether it falls on one side or the other of the line marked out by our former decisions.

We are of opinion that the present case comes within the principles announced in *In re Ayers*, 123 U. S. 443, 485, 496–500, 505. It appears from the report of that case that the Circuit Court of the United States for the Eastern District of Virginia in *Cooper* v. *Marye* made an order forbidding the Attorney General of Virginia and other officers of that Commonwealth from bringing suits under a certain statute of Virginia, in its name and on its behalf, for the recovery of taxes, in payment of which the taxpayers had previously tendered tax-receivable coupons. The state officers did not obey this order, and having been proceeded against for contempt of court, they sued out writs of *habeas corpus*, and asked to be discharged upon the ground that the Circuit Court had no power to make the order for disobeying which the proceedings in contempt were commenced. This court said that the question really was whether the Circuit Court had jurisdiction to entertain the suit in which that order was made, the sole purpose and prayer of the bill therein being by final decree to enjoin the defendants, officers of Virginia, from taking any steps in execution of the statute the validity of which was questioned.

It was adjudged that although Virginia was not named on the record as a party defendant, nevertheless, when the nature of the case against its officers was considered, that Commonwealth was to be regarded as the actual party in the sense of the constitutional prohibition. The court said: "It follows, therefore, in the present case, that the personal act of the petitioners sought to be restrained by the order of the Circuit Court, reduced to the mere bringing of an ac-

tion in the name of and for the State against taxpayers who, although they may have tendered the tax-receivable coupons, are charged as delinquents, cannot be alleged against them as an individual act in violation of any legal or contract rights of such taxpayers." Again: "The relief sought is against the defendants, not in their individual, but in their representative capacity as officers of the State of Virginia. The acts sought to be restrained are the bringing of suits by the State of Virginia in its own name and for its own use. If the State had been made a defendant to this bill by name, charged according to the allegations it now contains — supposing that such a suit could be maintained — it would have been subjected to the jurisdiction of the court by process served upon its Governor and Attorney General, according to the precedents in such cases. *New Jersey* v. *New York*, 5 Pet. 284, 288, 290; *Kentucky* v. *Dennison*, 24 How. 66, 96, 97; Rule 5 of 1884, 108 U. S. 574. If a decree could have been rendered enjoining the State from bringing suits against its taxpayers, it would have operated upon the State only through the officers who by law were required to represent it in bringing such suits, viz., the present defendants, its Attorney General and the Commonwealth's attorneys for the several counties. For a breach of such an injunction, these officers would be amenable to the court as proceeding in contempt of its authority, and would be liable to punishment therefor by attachment and imprisonment. The nature of the case, as supposed, is identical with that of the case as actually presented in the bill, with the single exception that the State is not named as a defendant. How else can the State be forbidden by judicial process to bring actions in its name, except by constraining the conduct of its officers, its attorneys and its agents? And if all such officers, attorneys and agents are personally subjected to the process of the court, so as to forbid their acting in its behalf, how can it be said that the State itself is not subjected to the jurisdiction of the court as an actual and real defendant?"

One of the arguments made in the *Ayers case* was that the Circuit Court had jurisdiction to restrain by injunction officers

of the State from executing the provisions of state enactments, void by reason of repugnancy to the Constitution of the United States. In support of that position reference was made to *Osborn* v. *Bank of the United States*, 9 Wheat. 738. But this court said: "There is nothing, therefore, in the judgment in that cause, as finally defined, which extends its authority beyond the prevention and restraint of the specific act done in pursuance of the unconstitutional statute of Ohio, and in violation of the act of Congress chartering the bank, which consisted of the unlawful seizure and detention of its property. It was conceded throughout that case, in the argument at the bar and in the opinion of the court, that an action at law would lie, either of trespass or detinue, against the defendants as individual trespassers guilty of a wrong in taking the property of the complainant illegally, vainly seeking to defend themselves under the authority of a void act of the General Assembly of Ohio. One of the principal questions in the case was whether equity had jurisdiction to restrain the commission of such a mere trespass, a jurisdiction which was upheld upon the circumstances and nature of the case, and which has been repeatedly exercised since. But the very ground on which it was adjudged not to be a suit against the State, and not to be one in which the State was a necessary party, was that the defendants personally and individually were wrongdoers, against whom the complainants had a clear right of action for the recovery of the property taken, or its value, and that therefore it was a case in which no other parties were necessary. The right asserted and the relief asked were against the defendants as individuals. They sought to protect themselves against personal liability by their official character as representatives of the State. This they were not permitted to do, because the authority under which they professed to act was void." And these were stated by the court to be the grounds upon which it had proceeded in other cases — citing *Allen* v. *Baltimore & Ohio Railroad Co.*, 114 U. S. 311; *Poindexter* v. *Greenhow*, 114 U. S. 270, 282; *United States* v. *Lee*, 106 U. S. 196. The court further said: "The very object and purpose of the

Eleventh Amendment were to prevent the indignity of subjecting a State to the coercive process of judicial tribunals at the instance of private parties. It was thought to be neither becoming nor convenient that the several States of the Union, invested with that large residuum of sovereignty which had not been delegated to the United States, should be summoned as defendants to answer the complaints of private persons, whether citizens of other States or aliens, or that the course of their public policy and the administration of their public affairs should be subject to and controlled by the mandates of judicial tribunals without their consent, and in favor of individual interests. To secure the manifest purposes of the constitutional exemption guaranteed by the Eleventh Amendment requires that it should be interpreted, not literally and too narrowly, but fairly, and with such breadth and largeness as effectually to accomplish the substance of its purpose. In this spirit it must be held to cover, not only suits brought against a State by name, but those also against its officers, agents and representatives, where the State, though not named as such, is, nevertheless, the only real party against which alone in fact the relief is asked, and against which the judgment or decree effectively operates. But this is not intended in any way to impinge upon the principle which justifies suits against individual defendants, who, under color of the authority of unconstitutional legislation by the State, are guilty of personal trespasses and wrongs, nor to forbid suits against officers in their official capacity either to arrest or direct their official action by injunction or mandamus, where such suits are authorized by law, and the act to be done or omitted is purely ministerial, in the performance or omission of which the plaintiff has a legal interest."

It was accordingly adjudged that the suit in which injunctions were granted against officers of Virginia was in substance and in law one against that Commonwealth, of which the Circuit Court of the United States could not take cognizance.

If these principles be applied in the present case there is no

escape from the conclusion that, although the State of Alabama was dismissed as a party defendant, this suit against its officers is really one against the State. As a State can act only by its officers, an order restraining those officers from taking any steps, by means of judicial proceedings, in execution of the statute of February 9, 1895, is one which restrains the State itself, and the suit is consequently as much against the State as if the State were named as a party defendant on the record. If the individual defendants held possession or were about to take possession of, or to commit any trespass upon, any property belonging to or under the control of the plaintiffs, in violation of the latter's constitutional rights, they could not resist the judicial determination, in a suit against them, of the question of the right to such possession by simply asserting that they held or were entitled to hold the property in their capacity as officers of the State. In the case supposed, they would be compelled to make good the State's claim to the property, and could not shield themselves against suit because of their official character. *Tindal* v. *Wesley*, 167 U. S. 204, 222. No such case is before us.

It is to be observed that neither the Attorney General of Alabama nor the Solicitor of the Eleventh Judicial Circuit of the State appear to have been charged by law with any special duty in connection with the act of February 9, 1895. In support of the contention that the present suit is not one against the State, reference was made by counsel to several cases, among which were *Poindexter* v. *Greenhow*, 114 U. S. 270; *Allen* v. *Baltimore & Ohio Railroad*, 114 U. S. 311; *Pennoyer* v. *McConnaughy*, 140 U. S. 1; *In re Tyler*, 149 U. S. 164; *Reagan* v. *Farmers' Loan and Trust Co.*, 154 U. S. 362, 388; *Scott* v. *Donald*, 165 U. S. 58, and *Smyth* v. *Ames*, 169 U. S. 466. Upon examination it will be found that the defendants in each of those cases were officers of the State, specially charged with the execution of a state enactment alleged to be unconstitutional, but under the authority of which, it was averred, they were committing or were about to commit some specific wrong or trespass to the injury of the plaintiff's rights. There is a wide difference between a suit

against individuals, holding official positions under a State, to prevent them, under the sanction of an unconstitutional statute, from committing by some positive act a wrong or trespass, and a suit against officers of a State merely to test the constitutionality of a state statute, in the enforcement of which those officers will act only by formal judicial proceedings in the courts of the State. In the present case, as we have said, neither of the state officers named held any special relation to the particular statute alleged to be unconstitutional. They were not expressly directed to see to its enforcement. If, because they were law officers of the State, a case could be made for the purpose of testing the constitutionality of the statute, by an injunction suit brought against them, then the constitutionality of every act passed by the legislature could be tested by a suit against the Governor and the Attorney General, based upon the theory that the former as the executive of the State was, in a general sense, charged with the execution of all its laws, and the latter, as Attorney General, might represent the State in litigation involving the enforcement of its statutes. That would be a very convenient way for obtaining a speedy judicial determination of questions of constitutional law which may be raised by individuals, but it is a mode which cannot be applied to the States of the Union consistently with the fundamental principle that they cannot, without their assent, be brought into any court at the suit of private persons. If their officers commit acts of trespass or wrong to the citizen, they may be individually proceeded against for such trespasses or wrong. Under the view we take of the question, the citizen is not without effective remedy, when proceeded against under a legislative enactment void for repugnancy to the supreme law of the land; for, whatever the form of proceeding against him, he can make his defence upon the ground that the statute is unconstitutional and void. And that question can be ultimately brought to this court for final determination.

What has been said has reference to that part of the final decree which holds the act of February 9, 1895, to be invalid and inoperative. Whether the owners of the bridge, and the plaintiffs as their representatives, were denied by the statute

fair and reasonable compensation for the use of the property by the public, was a question that could not be considered in this case. This is not a matter to be determined in a suit against the State; for of such a suit the Circuit Court could not take cognizance.

It remains only to consider the case so far as the final decree assumes to enjoin the officers of the State from instituting or prosecuting any indictment or criminal proceedings having for their object the enforcement of the statute of 1895. We are of opinion that the Circuit Court of the United States, sitting in equity, was without jurisdiction to enjoin the institution or prosecution of these criminal proceedings commenced in the state court. This view is sustained by *In re Sawyer*, 124 U. S. 200, 209, 210. It was there said: "Under the Constitution and laws of the United States, the distinction between common law and equity, as existing in England at the time of the separation of the two countries, has been maintained, although both jurisdictions are vested in the same courts. *Fenn* v. *Holme*, 21 How. 481, 484–487; *Thompson* v. *Railroad Companies*, 6 Wall. 134; *Heine* v. *Levee Commissioners*, 19 Wall. 655." Again: "The office and jurisdiction of a court of equity, unless enlarged by express statute, are limited to the protection of rights of property. It has no jurisdiction over the prosecution, the punishment or the pardon of crimes and misdemeanors, or over the appointment and removal of public officers. To assume such a jurisdiction, or to sustain a bill in equity to restrain or relieve against proceedings for the punishment of offences, or for the removal of public officers, is to invade the domain of the courts of common law, or of the executive and administrative departments of the government." At the present term of the court, in *Harkrader* v. *Wadley*, 172 U. S. 148, 169, 170, we said: "In proceeding by indictment to enforce a criminal statute the State can only act by officers or attorneys, and to enjoin the latter is to enjoin the State." Again: "Much more are we of opinion that a Circuit Court of the United States, sitting in equity in the administration of civil remedies, has no jurisdiction to stay by injunction proceedings pending in a state court in the name of a State to

enforce the criminal laws of such State." Undoubtedly, the courts of the United States have the power, under existing legislation, by writ of *habeas corpus* to discharge from custody any person held by state authorities under criminal proceedings instituted under state enactments, if such enactments are void for repugnancy to the Constitution, laws or treaties of the United States. But even in such case we have held that this power will not be exercised, in the first instance, except in extraordinary cases, and the party will be left to make his defence in the state court. *Ex parte Royall*, 117 U. S. 241; *New York* v. *Eno*, 155 U. S. 89; *Whitten* v. *Tomlinson*, 160 U. S. 231; *Baker* v. *Grice*, 169 U. S. 284. But the existence of the power in the courts of the United States to discharge upon *habeas corpus* by no means implies that they may, in the exercise of their equity powers, interrupt or enjoin proceedings of a criminal character in a state court. The plaintiffs state that the toll-gatherers in their service had been indicted in a state court for violating the provisions of the act of 1895 in respect of tolls. Let them appear to the indictment and defend themselves upon the ground that the state statute is repugnant to the Constitution of the United States. The state court is competent to determine the question thus raised, and is under a duty to enforce the mandates of the supreme law of the land. *Robb* v. *Connolly*, 111 U. S. 624. And if the question is determined adversely to the defendants in the highest court of the State in which the decision could be had, the judgment may be reëxamined by this court upon writ of error. That the defendants may be frequently indicted constitutes no reason why a Federal court of equity should assume to interfere with the ordinary course of criminal procedure in a state court.

It appears from the record that Clem and Brabson were indicted in the state court under section 4151 of the Criminal Code of Alabama. Having been arrested under those indictments, they sued out, as we have seen, writs of *habeas corpus* upon the ground that they were indicted for taking tolls in violation of the above act of February 9, 1895, which they alleged to be unconstitutional, and that their arrest was in dis-

regard of the injunction of the Circuit Court restraining the institution and prosecution of indictments or other criminal proceedings in execution of that act. The Circuit Court discharged the petitioners upon their own recognizances. It was error to discharge them and thereby interfere with their trial in the state court. As already indicated, the Circuit Court, sitting in equity, was without jurisdiction to prohibit the institution or prosecution of these criminal proceedings in the state court. Further, even if the Circuit Court regarded the act of 1895 as repugnant to the Constitution of the United States, the custody of the accused by the state authorities should not have been disturbed by any order of that court, and the accused should have been left to be dealt with by the state court, with the right, after the determination of the case in that court, to prosecute a writ of error from this court for the reëxamination of the final judgment so far as it involved any privileges secured to the accused by the Constitution of the United States. *Ex parte Royall*, *New York* v. *Eno*, *Whitten* v. *Tomlinson* and *Baker* v. *Grice*, above cited. There were no exceptional or extraordinary circumstances in these cases to have justified the interference by the Circuit Court, under writs of *habeas corpus*, with the trial of the indictments found in the state courts.

The judgment of the Circuit Court is reversed, with directions to dissolve the injunction restraining the institution or prosecution of indictments or other criminal proceedings in the state court, to dismiss the suit brought by the receivers against the Attorney General of Alabama and the Solicitor of the Eleventh Judicial Circuit of the State, and to remand Clem and Brabson to the custody of the proper state authority.